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Sale Law Papers: being draft of an Act. read in Council on 14th October 1839, for amending the Bengal Code in regard to Sales of Land for arrears of revenue and other papers on the subject, 1839

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No. 1237.

To T. H. Maddock, Esquire,

Officiating Secretary to the Government of India.

Sir,

Revenue. I am directed by the Hon'ble the Deputy Governor of Bengal to forward to you, in order to its being laid before the Hon'ble the President in Council, an original letter from the Secretary Sudder Board of Revenue with enclosures, as per margin, relating to a proposed alteration of the existing Law for the realization of the Land Revenue by the process of Sale; also an extract from the proceedings of the Government of Bengal in the General Department, regarding the defects of the existing Law, in so far as it is applicable to the sale of Land for the recovery of arrears of Abkaree Revenue.

Draft of an Act.
Sketch of the several Regulations.
Minute C. by Mr H Walters, dated 29th Sept. 1837.
Ditto by Mr Tucker, dated 8th March 1838.
Ditto A. and B. by Mr. H. Walters, dated 20th July and 30th May 1837.

Upon the Draft, which the Sudder Board of Revenue have prepared of a new Sale Law, I am desired by the Hon'ble the Deputy Governor to submit the following observations:

It appears to His Honor that the discretionary power given by Sections XV. and XVI. to the Commissioners of Revenue and the Sudder Board of Revenue to cancel a sale of an Estate for the recovery of an arrear of Revenue made according to Law, is objectionable.

The frequency with which this power has been hitherto exercised has considerably reduced the prices obtained for Estates sold by Public Auction, by rendering the stability of such sales uncertain; and His Honor is inclined to think that the cancelment of a sale by any authority should not be allowed on any ground but that of illegality.

These Sections declare what are to be the consequences of a sale for the recovery of an arrear of Revenue to the under-tenures in the Estate sold.

Sections XXVI
XXVII.
XXVIII.
XXIX.

The following under-tenures are not to be in any way affected.

1st. Istemraree tenures of the nature described in Section 19, Regulation VIII. 1793.

2d. Talooks existing at the time of the Decennial Settlement, and not at that time or subsequently proved to be liable to increase of assessment, in the manner and for the reasons stated in Section 51 of Regulation VIII. of 1793.

3d. Lands held under bonâ fide leases, temporary or perpetual, for the erection of Dwelling Houses and Manufactories, or for Gardens, Tanks, Canals, and like purposes.

The under-tenures which *are* to be affected by a sale, are the following :

1st. Tenures created mala fide, or collusively, after the conclusion of the Decennial Settlement.

2d. Tenures created bonâ fide after the conclusion of the Decennial Settlement.

The mala fide, or collusive tenures, are to be voidable in toto, and the holders are to be liable to ejectment. To this, His Honor sees no objection.

The bonâ fide tenures are to be affected quoad their rent only, which is to be liable to enhancement, the right to occupy and cultivate the Land at an adequate rent continuing vested in the holders.

This consequence to an under-tenure, which confers not only a right to occupy in perpetuity the Land included in it, but also a right to occupy the Land at a rent fixed for perpetuity, is necessary to secure the Land Revenue from being deteriorated by the creation of under-tenures assessed with inadequate rents.

But a farm under a lease for a limited period, at a rent payable during such period, equal to what the Lands included in the farm were capable of yielding when the lease was granted, is a bonâ fide tenure ; and as such its rent will be liable under the proposed Act to enhancement.

This, the Deputy Governor considers objectionable ; especially as the annulment of bonâ fide temporary leases is not necessary for securing the Revenue from deterioration. The great defect, His Honor thinks, of the Sale Law now in force (Regulation XI. 1822) is that it does not afford the security to leases of this description, which is essential to the improvement of the agriculture of the country; and a new Law which shall not remedy that defect will not be productive of much advantage; for while it remains unremedied, no intelligent Farmer will employ his skill and capital on Land held under a lease which the lessor may at any time cause to be annulled.

As a remedy for the defect mentioned, the Deputy Governor would propose that it be enacted in the new Law, that it shall not be lawful for the purchaser of an Estate sold for an arrear of Revenue to annul a farming lease granted by the defaulting, or by a former proprietor, for a term not exceeding twenty years, and stipulating for the payment of an annual rent, not being less than the average rent realized from the Lands in the three years immediately preceding the year in which the lease was granted.

By defining in the above manner the farming leases which it would not be lawful to annul, and by attaching a heavy penalty to the annulment of a lease com-

ing within the definition given, every reasonable security would be afforded to the holders of fair leases—while auction purchasers, under the provisions of Sections 27 and 28 of the proposed Act, would be competent, without application to a Court of Justice, to assess with adequate rent all Lands in the Estates purchased by them held under unfair leases, *i. e.* leases not coming within the definition given of a lease not lawfully annullable.'

I have the honor to be,

Sir,

Your most Obedient Servant,

FRED. JAS. HALLIDAY,

Secy. to the Govt. of Bengal.

FORT WILLIAM,
The 10th July, 1838.

No. 151.

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To F. J. HALLIDAY, ESQUIRE,

Offg. Secretary to the Govt. of Bengal,
Revenue Department,
FORT WILLIAM.

SIR,

Miscellaneous Department

I am directed by the Sudder Board of Revenue to acknowledge your predecessor's letter of 6th July 1837, No. 926.

2nd. The important subject to which your letter relates has received the Board's most careful attention, and they are now enabled after much deliberation to lay before the Right Honorable the Governor of Bengal a Draft of a Legislative Enactment for the realization of Land Revenue by Sales.

3rd. To make this as complete as possible, the Board commence the Draft by providing for the rescission of all previous Regulations, and parts of Regulations, regarding the process of sale. The Draft then proceeds to the following subjects in the order of their enumeration:

2. Interest on Balances.
3. Periodical Sales, and their exceptions, and adjournment of Sales.
4. Coparceners.
5. Persons having contingent interests in Mehals under sale.
6. Conclusion of Sale and completion of purchase Money.
7. Purchase by Amlah.
8. Notification to Under-tenants.
9. Appeal from Sale.
10. Conditions of validity of Sale.
11. Completion of Sale and disposal of purchase Money.
12. Giving possession.
13. Rights acquired by Purchaser, and consequences on Under-tenures.
14. Power of Collector in cases of contempt.

Interest on balances.

4th. The practice of taking interest on revenue balances at a fixed rate of 12 per cent. is in the judgment of the Board always inexpedient and frequently unjust. *Interest* as distinguished from *Penalty* is levied only to reimburse the State for the loss of the use of money due but not paid, and not as a punishment, and if it *be* levied for any other reason it assuredly is wrongly levied.

5th. To demand then 12 per cent. invariably when the usual interest of money may be down to 4, or up to 15 per cent. is at variance with reason and equity, and requires remedy.

6th. The Draft accordingly provides that the rate of interest leviable upon Revenue balances shall vary, and that the Governor of Bengal shall determine previous to the close of each official year, the rate at which interest shall be levied during the year ensuing, and to this alteration the Board do not anticipate any objection.

Periodical Sales and their exceptions and adjournment of Sales.

7th. By Regulation VII. 1830 Monthly Sales for Arrears of Revenue were prescribed "as an invariable rule." But this has always been found impossible in practice, and the orders of Government of November 1834, which gave to Collectors a discretion in this particular, only added a sanction to what was already the universal practice.

8th. But the discretion thus exercised, though in all respects preferable to a system of invariable Monthly Sales, has this disadvantage, that being dependant on the characters and opinions of the several local Revenue Authorities and subject to variation as often as the public Officer is changed, it necessarily produces an uncertainty as to the time of demand and payment of Revenue very unfavorable to punctuality and economy. It may be added as a corollary, that the power of enforcing or relaxing the process of Sale towards particular Zemeendars or Estates, is always,—when the present system is administered by an inefficient Collector, in the hands of the Amlah—who very generally abuse it to the oppression of individuals, the discredit of Government, and the deterioration of the Land Revenue.

9th. To obviate these evils, the Board have provided in the present Draft, that it shall be their duty to fix before the commencement of every year after communication with their subordinates certain periods—once, twice, thrice or oftener as may be judged necessary, in the year at which Estates in balance will, with a few intelligible exceptions, be invariably brought to sale, and (unless the balance be discharged) sold for the arrear. These periods may vary from year to year, or in different districts according to circumstances, but the general object will be to fix as few in the year as are consistent with the secure realization of the Revenue, and to fix them at seasons most convenient (with reference especially to the harvests) to the Zemeendars.

10th. To carry this provision, and that regarding interest properly into effect, it will be necessary to diminish the number of kists and to reduce them as nearly as may be found practicable to the number of Sales in each year. For this purpose, however, no legal enactment is requisite as the Board have the power of determining from time to time under the control of the Government, the kists in which the Revenue shall be paid.

11th. The Board are fully persuaded that the levy of interest, under the complex system of account which the present numerous kists render unavoidable,

and irremediable is often more harrassing to the Zemeendar than advantageous to Government, if not generally a source of grievous abuse. To diminish the number of the kists will greatly simplify the interest accounts, and tho' the greatest advantage from the change will undeniably accrue to the Zemeendars, who, if the number of kists correspond with that of the Sales, will rarely (except in cases of actual Sale) pay any interest at all, and then only a small amount. Yet no inconsiderable benefit will be produced to the State both by increase of the amount and by punctuality of payments of *principal*, which the new system will infallibly cause; and by the removal of the opportunity and temptation to embezzle, which the old practice has notoriously occasioned.

12th. To the Sudder Board, and the Commissioners, power is given by the Draft to except, on special grounds, any Estate from sale, and this power is for obvious reasons necessary.

13th. The Draft also excepts from sale Estates under the Court of Wards, and Estates *not* under the Court of Wards, *but* from which a balance may be due on account of a period when they *were* under the Court of Wards.

14th. This latter exception, i. e. regarding Estates not under the Court of Wards at the time of sale, is objected to, by the Temporary Member, Mr. Walters. He is of opinion, for reasons which are fully given in his Minute on the Draft, that such Estates may very frequently be brought to sale for balances belonging to a period when they *were* under the Court of Wards, without any injustice, seeing that the balances in the cases supposed, or anticipated by him, may be owing to no fault of the Government, or its Officers, but to fraud on the part of those concerned in the property.

15th. But the majority of the Board are decidedly of opinion that there can be no conceivable case of balance due from an Estate on account of such a period except by reason of some fault, or neglect, or oversight committed by the Officers of Government, and consequently that it is always in the power of Government or its Officers, under the powers given them, by the existing law to prevent the occurrence of such balances.

16th. The two cases quoted by Mr. Walters in support of his view, are, in the opinion of the Board, no exceptions to the rule they have laid down. The second case (that of Pergunnah Rookunpoor,) was one in which the proprietor having thrown his Estate heavily into balance, made it over at the close of the year to his minor son, and professing to give up the world, and to retire to Benares as an ascetic, procured his Zemindaree to be taken, balances and all, under the Court of Wards. The collections of the first year of management under the Court of Wards were applied by the Collector to payments of the previous arrear of revenue, and each successive year to that of the year which preceded it:—so that necessarily there remained at last a balance belonging to a period when the Estate was under the Court of Wards to the realization of which the Sale Laws were inapplicable.

17th. This result accorded doubtless with the premeditated plan of the Zemeendar; but the Board are of opinion that it may be attributed entirely to the extreme carelessness of the local Revenue Authorities, who should manifestly, never have taken the Estate under the Court of Wards until they had first realized the existing balance, or having taken it under the Court should have credited the Revenue of each year, with the collections of that year, and thus avoided throwing the Estate into balance on account of a period during which it was under their management.

18th. The other case is not very dissimilar from the last.

19th. Two female proprietors sold permanent under-tenures in their entire Estate at very inadequate Jummas, appropriated the proceeds of the transaction, and then procured the Estate to be placed under the Court of Wards on the ground of their incompetency as females.

20th. The Court of Wards persisted in the management under these circumstances till the matter could go on no longer, and then found that the balances necessarily accruing in an Estate of which the rent was less than the Revenue were unrealizable by sale as having become due under the management of the Court of Wards.

21st. In this case, the Revenue Authorities should obviously have ascertained the capability of the Estate and its general circumstances, before they volunteered to manage it,—and in order that they might do so upon such occasions, Section 4, Regulation VI. 1822, was enacted. They omitted, and through them the Government omitted, to take this very simple precaution. Surely (the majority of the Board bid me observe) this is not a case in which it can be said that the balance is "owing to no fault of the Government or its Officers?"

22d. The exception stands therefore in the Draft agreeably to the decision of a majority of the Board. Mr. Walters however bids me observe that his remedy was designed to meet an evil, found to exist in practice and not to remedy an evil which should not have existed: and that because only two cases are quoted by him in illustration, it is not to be concluded that the evil has not a much wider application.

23d. The existing Law contains another exception which it is not proposed to insert in the Draft under consideration, that, namely, in favour of Estates attached by order of a Court of Justice.

24th. It was considered that attachment by order of a Court of Justice was not always, and perhaps not often, a valid reason for exception, so as to give cause for a general rule excepting such Estates. Estates are frequently attached in consequence of the mere fault, and they might often be by the actual fraud, of the proprietors, especially if the advantage of security from sale were added to attachment. In those few cases, in which a sale during the year pending attachment might be harsh, or inexpedient, the power of excepting Estates from sale given to the Board, and to Commissioners, would meet all difficulties.

25th. It was moreover considered that in making *general* exceptions to the usual process prescribed to the Revenue Authorities for the realization of Revenue, reference should be had to the difficulties of payment which might be opposed to the Zemeendars by the acts of the Revenue Authorities themselves; as for instance, the taking by the Revenue Authorities, of an Estate, under the Court of Wards —attachment by a Court of Justice in which the Revenue Authorities have not necessarily any concern but as Agents, and instruments of the Court by which attachment is ordered, did not appear to fall within the proposed category, and no general exception therefore was based upon it. It is true that a Collector, managing an attached Estate by order of a Court, might grossly mismanage it, and thereby cause a balance of Revenue, but this would be a special case to which the special powers of exception allowed to the Board, and to Commissioners, would be essentially applicable.

26th. The Law of Sale as at present in force allows of postponement and adjournment respectively, under separate rules for each description of delay, as if in fact the one term signified delay of the sale for more than one day, and the other putting it off from day to day.

27th. As might be expected, confusion has arisen from this different use of two nearly similar terms, few Collectors distinguishing in practice between postponement for a week, or a month, and adjournment from day to day, as intended by Regulation II. 1822, and as a sale adjourned under the rules for postponement became irregular, and sales postponed under the rules for adjournment actually illegal, it was clear that at least some more lucid legislation was needed on these two points, if indeed the two should not prove to be somewhat unnecessarily distinguished.

28th. The Board came to the last conclusion: they observed too, that the present law, by allowing a Collector arbitrarily to postpone a sale from one month to another even after parties had attended from all quarters and when all was ready for the commencement of the sale, excepting the Collector's personal convenience; afforded an opening for laxity and abuse which had within their knowledge been too frequently taken advantage of, to the great harassment of the people and the detriment of the Government Revenue.

29th. To adjournment used in the sense of putting off from day to day, there was not, especially when duly restricted, such grave objection, and even if there were objections, it would be impossible to avoid it.

30th. It is provided therefore, that the Collector may for good reasons, to be daily recorded and communicated to the Commissioner continue to put off the commencement, or continuance of a periodical sale until his ability to hold or continue it be restored.

31st. A sale is such an important part of a Collector's duty, and the punctuality and certainty of its occurrence is so necessary to its effectiveness as an instrument for the collection of Revenue, that no pains should be spared to ensure the regular and punctual accomplishment of its operation.

32d. This limited and guarded adjournment therefore is the only mode of delay allowed by the proposed Draft.

33d. With the exceptions adverted to, the Draft provides that all Estates in balance up to sunset of the day preceding that fixed for the commencement of the periodical sale, shall be sold on that and succeeding days; and the meaning is that no payments in liquidation of balances shall be received after the time specified, except (as afterwards provided) on further payment upon the calling up of the lot in balance of a certain daily increasing fine proportioned to the balance.

34th. It is perhaps proper for the Board here, to explain that the above rule has been matter of considerable discussion, and that they are not yet fully agreed upon the expedient which ought to be adopted. The question, as it originally came before the Board lay between allowing payments on each lot up to the moment of bidding for, or calling up that lot as at present, and fixing a time previous to the commencement of the sale after which no payments should on any account be received.

35th. The plan of adding to the last mode, a rule of amercement for later payments was a kind of compromise which they have allowed to stand in the Draft though they are not fully prepared to contend for its adoption, the real question is still, they are inclined to think, between the extreme measures of limiting all payments to a fixed time before the commencement of the periodical sale, on the one hand, and on the other, of admitting as is now done all payments up to the moment of the calling up of each lot.

36th. The objections to the latter plan seem to be that from the known characters and habits of the Zemeendars, it may be safely asserted that a very large majority of them would do under such license, exactly what they do now, viz. keep back their money to the latest possible moment, and thereby not merely protract the sale to such a degree, that it would become a disproportionate claim upon the Collector's time, but entirely prevent the readiness and accuracy of accounts upon which, as a condition of the sale of any Mehal, the Board lay great and just stress. Practically an extension of the time of payment to the moment of calling up the lot is an extension to the moment of knocking it down, and thus as is now actually the case, the Collector's time and patience, and those of the persons attending the sale, would be wasted upon many protracted biddings to no purpose. For if the principle be established, that it is unjust to refuse payments up to the latest possible moment, there is no ground on which to defend a limitation to the moment of the lot being called up, or to any time short of the actual completion of the sale, and knocking down of the lot. If it be unjust to refuse to accept payment at noon on Monday because the lot is still unsold, and because the parties are then ready to pay, it will be difficult to shew that it is not unjust to refuse receipt of the same payment on Tuesday at noon, because though the bidding may then have commenced the lot is still unsold, and the parties still ready to pay. And though this may be denied in theory, it has and will have its effect in practice, and no Collector will readily undertake the odium and responsibility of knocking down a lot when the parties at the last moment produce the balance.

37th. They who advocate the taking of payments up to the moment of commencing the sale, and not afterwards, admit in effect that there must be a *last moment* even some time previous to the actual knocking down of the lot, and the balance being due and the latest term of payment well known, it may be doubted whether there is more hardship in fixing that latest term for Monday at noon, rather than in fixing it on Tuesday: and when it is considered that one of the great objects of the new enactment is to school the Zemeendars to punctuality, and to take from the Sale Laws that uncertainty which now forms one of their greatest objections, and which perhaps more than any thing else tends to betray the Zemeendars to their ruin, it may reasonably be doubted whether the earlier limit be not on the whole the most advantageous to the Revenue payers.

38th. For it must be borne in mind, that to fix the moment of calling up the lot as the latest term of payment, is necessarily to adopt an *uncertain* instead of a *certain* limit, and the uncertainty will always be increased by the habits of the Zemeendars who it may confidently be predicted will calculate on delays, and chances in their own favour which may never occur, and while they are hoping that their respective Estates may not be called up till the third, fourth, fifth day, or even by some chance not at all, may find themselves as they do now often find, sold out and ruined on the second day by an unlucky chance, which, had the term of payment been fixed immutably, they never would have incurred.

39th. On the other hand it may be urged, and this is in fact the line of argument pursued by the Senior Member, that no creditor can equitably refuse to receive payment of a debt, and in consequence of payment to forego proceedings against his debtor—that in all countries, and under all systems, a tender of payment even at the very latest moment is sufficient, and justly so, to invalidate all subsequent coercive measures for enforcing payment; that the debt of Revenue due by a Zemeendar to the State should be no exception to this rule, but rather, in consideration of the weight of the demand, and the severity of the coercive process, the contrary; that on this ground, if on no other, even were analogy against the indulgence, Zemeendars should be leniently and mercifully and considerately dealt with, and allowed all possible opportunity of discharging demands and saving their Estates from sale—that the sale of an entire Estate for the realization of arrears of Government Revenue, however small they may be, is avowedly a peculiar and severe mode of coercion, and only to be justified by its absolute necessity in each case to which it may be applied, that cases of sale made after tender of payment can by no process of reasoning be made out to be necessary, and can therefore under no circumstances be justifiable. It should be also remembered that a rule to be just must be applicable to all parties. It is proposed that all defaulters who have not paid their arrears, and are in balance up to sunset of the day preceding that fixed for the commencement of the periodical sale, shall have their Estates sold on that and succeeding days, and though their arrears are tendered they shall not be received. Now suppose that (which will often happen) the Collector cannot from sickness or other emergent cause, commence the sale *on the day fixed* nor till many days after. With any semblance of justice can arrears tendered on the day fixed for sale or on the day previous to the lot being put up, or on any intervening day, be refused and the Mehals be sold

for those arrears? suppose the Collector after holding the first day's sale, is necessitated to postpone it dedie in diem for many days—are the defaulters to have their Estates sold, though from the commencement of the day fixed for commencing the sale always tendering their arrears? For the sake of mercy and justice the Senior Member trusts this will never be law; and yet if the arrears due on the first day of sale were refused because not paid the day before, the defaulters of every succeeding number of days would have no better claim than the defaulter of the first day. Under no received principle of justice yet sanctioned or in practice, to the Senior Member's knowledge, can a man's real property be sold although tendering the whole claim which made it under the laws liable to sale. The Senior Member intends his observations to apply to all defaulters whether Proprietors of or Sharers in Estates.

40th. It is to be remembered also, that unless the presence of the Collector in his Office at the time proposed under the antagonist plan, to be fixed for ultimate payments be secured and necessitated, the Zemeendars will always be in the power of the Amlah who may refuse tenders and cause sales at their pleasure without the possibility of check. But there *is* no way of securing the Collector's presence in his Office at any given time previous to the sale, while on the other hand the license of payment up to the last moment, when of necessity, and by the very terms of the proposition the Collector must be in his Office, obviates this great evil, and secures the protection of the Zemeendars from the hands of the Amlah. Again, if, as has been stated, the Zemeendars are betrayed into negligence of attendance, which occasions often times their losing their Estates, when the license to pay up their arrears is extended to the period of the lot being called up, it is to be remembered the injury in that case will have been inflicted by themselves, and there can be no question as to their preferring this extended indulgence, if their wishes be admitted to turn the scale and to decide which of the two measures should be preferred. Justice, mercy, and the invariable usage hitherto of this and all other civilized countries, advocate their being allowed to the moment of the commencement of a sale to pay the whole arrears. Whilst against this indulgence can be only urged reasons of expediency and of speculative improvement.

41st. In the opinion of the Temporary and Officiating Members the middle course embodied in the Draft meets all difficulties. Payment falls due with respect to all alike:—and if prompt payment is not made, liability to sale is incurred by all alike. But if additional time for payment is accorded the parties should be made to pay for that accommodation, and while the amount penalty to be paid will be proportioned in each case to the accommodation granted, there will be no inducement to delay to the last moment, but on the contrary every inducement to liquidate promptly the Government demand.

42d. The question is in either point of view one of difficulty and importance, and having stated their general views on the subject on both sides, they leave it for the consideration of His Lordship.

Coparceners.

43d. To meet the frequent cases of Coparceners in entire Estates ruined in spite of their best endeavours by the consequences of the arrears of their partners,

the Board felt that some provision was necessary. Under the Law as it now exists, such a case as the following is of frequent occurrence. A, B, C, and D, own an entire Estate in equal shares, and are recorded accordingly. A pays up a fourth of the Revenue regularly, B, C, and D, never do. If A applies for a Butwarrah B, C, or D, oppose, and prevent it under Section 4, Regulation XIX. 1814, and if he would preserve his property from being sold along with the rest of the Estate for the balances due from B, C, and D, he must continue to pay those balances as often as they fall due. This cannot last long and the Estate is eventually sold, when very often B, C, and D, or any one of them who had probably kept back his payments for this very purpose, buys the whole Estate under a feigned name, and A is at any rate deprived of his property by circumstances over which it was impossible that he could exercise any controul.

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44th. This is no doubt a serious evil, and one deeply felt by the Native community, who have frequently expressed their surprise that it should so long have been allowed to exist.

45th. The remedy seemed to the Board simple—it was merely to enact that any Sharer in an entire Estate the relative proportion of whose share to the whole Estate was known, and registered, should always be able, as in an Estate under Butwarrah, to pay in his quota of a balance due, and preserve his share from sale in the same manner, and to the same effect as shares under similar circumstances are preserved under Butwarrah, the integrity of the Estate remaining undisturbed, although the rights of a Sharer or Sharers should be sold for arrears.

46th. The Board are satisfied, that this amendment while it will give great satisfaction to the Zemeendars, will also be of advantage to the Government Revenue, for it is reasonable to imagine that the Sharers in a Zemeendary will be more ready to pay their several shares of revenue when they are certain of reaping the full benefit of their punctuality, and it is well known that much of the difficulty which is now found in realizing the Government dues, arises from the constant and natural reluctance of each Sharer to pay his due, so long as he is uncertain of the intentions of his partner and the consequent security or insecurity of his Estate.

47th. In Estates held by Coparceners, in the manner above described, it usually happens that each Sharer pays in his revenue separately, though the whole is credited to the common demand, and whenever this is the case, the actual proportion of the existing balance due from each Sharer will be at any time known.

48th. But it also occurs that in consequence of the parties commonly paying their shares through one Agent, or by reason of transactions among themselves, the actual proportion of a balance due from each Sharer may not be known to the Collector. To provide for these cases the Draft goes on to enact, that whenever that is the case, each Sharer may pay such a proportion of the balance due as his known, and registered share of the Estate may bear to the entire Mehal and thus secure his share from sale. This provision seems necessary and equitable; and though it may occasionally happen from it that parties will pay more than is really

due from them yet, whenever it does happen the injured party will have redress at law against those whose shares he has contributed to pay, and will at all events have saved his property from being sold—and he need never do it more than once for the balance being paid in full, he may have a Butwarrah.

49th. The Temporary Member (Mr. Walters,) is of opinion with reference to these provisions, that a discretionary power should be given to the Commissioner, notwithstanding the above rules to cause at any time an Estate held in Coparcenary to be sold entire, and to refuse to the several Sharers the option of saving their shares.

50th. Mr. Walters thinks that the privilege, unless some such precaution be adopted, may be perverted to purposes of fraud, and at the same time cause danger to the stability of the Government Revenue. Mr. Walters observes (with reference to aras. 43, 44, 45,) that the provision now introduced is intended as a remedy against the defects of the Butwarrah Law, and that were that Law perfect, this provision would not be necessary.

51st. The different modes in which Estates are held in joint tenancy may be classed as follows:

1. "Mofussil Ijmali" or "Mujkoornee," in which A, B, C, D equal Sharers, receive each from the same Ryott 4 Annas or ¼th of his rent.

2. "Dhebundee" or "Mowzawaree," in which A, B, C, D each hold certain Dhees or Mowzahs proportionate to a 4 Annas share of the entire Estate.

3. "Ryott Tukseem," in which the Ryotts are partitioned out to each Sharer according to their respective shares.

4. In which each Sharer holds Neez Talooks or Kamars in exclusive possession, and shares jointly with the others in the common Estate, according to one or other of the modes above-mentioned.

52d. Now where each party in a joint undivided Estate is in possession of Assets proportionate to the Jumma demandable from him, that is to say, if being a 4 Annas Sharer, he receives 4 Annas of the total collections and no more, and pays 4 Annas of the Sudder Jumma, or, if a party in possession of a specific Mehal, actually pays a proportion of Jumma bearing the same proportion to the total Sudder Jumma, as the produce of the specific Mehal bears to the produce of the entire Estate; in either case, supposing at the same time the title of the parties to their respective shares to be undisputed, there could be no possible hindrance to such an Estate being brought under Butwarrah, the Butwarrah could neither be "opposed nor prevented." It is in fact only in cases of disputed *title* that under Clause 2, Section 4, Regulation XIX. 1814, a Butwarrah *can be prevented*, and in such cases the Collector is directed "not to proceed to the division until the disputed "title be established in a Court of Justice." To provide against artificial delays and impediments, on the other hand Section 21 authorises the Collector to fine

impeding Sharers; and Section 32 authorises him to put a Sharer in possession of his share previous to the completion of the Butwarrah under certain circumstances.

53d. It is only however, with the power to bring an Estate, or to prevent an Estate being brought under Butwarrah, that we have at present to do, because if it be once brought under Butwarrah, then a right to pay his own share of the Jumma, and to save his own share of the Estate, from sale, is acquired under Section 33 by each Sharer, and the provisions introduced in this Draft becomes supererogatory.

54th. As then *all honest Sharers* possess already all the privileges it is the purport of this new provision to give them, it is to be presumed that the new Law is designed for the benefit of the dishonest, the overbearing, and tyrannical, and by such parties the proposed provisions would, Mr. Walters doubts not, be hailed with "great satisfaction."

55th. The facts in most or all cases of opposed Butwarrah, according to Mr. Walters' experience, are either:—

1. A claims under the Butwarrah, say a six Annas Share, whereas he is entitled "by Law" only to a four Annas Share, whereon he is opposed by B, C, D, who each claim a four Annas Share.

2. Or, A and B are in possession of Lands (as Neez Talook or Kamar, for instance, in which excess of possession generally lies) and Ryotts, yielding them two-thirds of the gross Assets of the Estate and yet pay only half of the Sudder Jumma.

3. Or, A, B and C buy out or turn out D, and collect the entire Assets of the Estate, paying 12 Annas Sudder Jumma.

56th. 1. In the first case A under the new Law would pay the Collector six Annas of the Jumma in order to procure Dakhilas as proofs that he is a six Annas Sharer and is in possession of six Annas. B, C, D would petition the Collector opposing the claim. Is the Collector to sit as Judge and decide on it? A may have procured his name to be registered as a six Annas Sharer in the Collector's books. True, but mere registry is no proof of proprietary right. If forced to apply for Butwarrah, his application is rejected, because his title is disputed. But by the New Law his claim might be upheld on the mere fact of registry, despite his defective title, the wise and just precautions of the Butwarrah Law being over-ruled; and the production of the Collector's Dakhila might enable him to collect from the Ryotts by distraint accordingly.

57th. 2. In the second case it is evident that A and B would pay most willingly and promptly 8 Annas of the Revenue which the Collector could not refuse to accept, and enjoy at the same time 12 Annas of the fruits. The shares of C and D would in the end be sold. Whoever bought them could only be put

in a position to pay the Revenue by means of a regular Butwarrah to which A and B would of course offer every possible opposition. In the mean time the Government Revenue equal to half the Sudder Jumma would be at stake.

58th. 3. Much the same would be the case in the 3rd instance. In all, till an actual survey and partition should be made, there would be no remedy for the evil. The usurpers would continue in undisturbed possession, no better provision it appears to the Temporary Member, could be conceived for placing the poor and helpless at the mercy of the rich and powerful, for over-riding, and in fact annihilating the Butwarrah Law, and jeopardizing the Government Revenue.

59th. If the Butwarrah Law is defective, it should be amended. But the Board have lately reported to Government that in their opinion, it sufficiently protects the interests of all parties, and that it requires no further amendment than that which it has already obtained by Act XX. 1836. See Board's letter to Government No. 308, dated 24th June, 1837.

60th. If then it is determined to introduce these provisions, a discretion of bringing the entire Estate to sale when the Revenue cannot otherwise be realized, must in Mr. Walters' judgment, be given to the Commissioner, or the Government Revenue will be sacrificed.

Persons having contingent interests in Mehals under sale.

61st. The case of a mortgagee, and not less so of an under-tenant, is in the present Law frequently hard. If a Zemeendar mortgages his Estate and forthwith throws it into balance and brings it to sale, the mortgagee is absolutely without remedy. If a Zemeendar do the same thing after letting his whole Estate or any portion of it in farm, for a consideration received, and after the farmer has perhaps expended capital on his farm, no efficient remedy exists. In either case, the party about to be aggrieved may pay in the balance, but this can hardly be his interest, under any circumstances, since the payment so made will never be put down by the Collector to any other than the credit of the defaulting Zemeendar.

62d. It was suggested to the Board by your letter No. 247 of 21st February 1837 para. 5, that they should provide for these cases by allowing the mortgagee or under-tenant a right of immediate entry on payment of the balance, restoring the Estate to the Zemeendar on his discharging the debt.

63d. But to this plan some important objections presented themselves. Possession of an Estate especially when enforced to the detriment of an opposing Zemeendar, is or might easily be made useless, or at least of little comparative value, unless the power of annulling under-tenures were added. But to allow under-tenures to be annulled, subject to re-entry and of course re-annulment by the Zemeendar, and this as often as the Estate might be in balance, could not but be detrimental to agriculture, and destructive of the security of property, and the investment of capital.

64th. Again such a provision might enable a fraudulent Zemeendar to evade the just demands of many creditors by colluding with a fictitious mortgagee and giving him for an unreal consideration, possession of the Estate.

65th. As regards under-tenants too, the Board observed that the privilege proposed for them would render them in a great measure independant of their landlords, and even encourage them especially when holding the entire Estate to set the Zemeendars at defiance and perhaps to withhold their rents at critical times for the express purpose of throwing the Mehal into arrear, and obtaining entry by payment of the balances due in consequence of their own acts. And to enable the farmers to defy their landlords even when making just claims, which it was much to be feared would result from the alteration in question, would be in the Board's opinion rather more mischievous than to allow a landlord to defy his tenant, which was the mischief intended to be obviated by the suggested innovation.

66th. The only safe means of obviating this and similar mischiefs, seems to be to allow any person whatever to pay in a balance of Revenue due upon a particular Mehal whenever it may be the interest of such person to save the Mehal from sale, and in order to ensure to the payer in such case all equitable advantage from his act of payment, to cause an acknowledgment of payment to be granted in such cases in such a shape and form as will be in case of need legal evidence of the fact and mode of payment in any Court of Justice.

67th. Under this rule, a mortgagee might pay the balance, and through the evidence of his payment afforded by the prescribed acknowledgment, recover the sum paid with interest together with the amount due on the mortgage, which he would of course lose no time in foreclosing, and a tenant in like manner, might pay off a balance of Revenue due by his landlord to Government, and produce the acknowledgment as a set-off in case of an action against him by the landlord to recover rent.

68th. And in fact, it is difficult to suppose any probable case in which the proposed law will not give an equitable and safe remedy.

Conclusion of sale and completion of purchase money.

69th. Great inconvenience, uncertainty and delay, involving evil consequences to Government and to individuals are caused by the failure of purchasers to complete their purchases, and the subsequent necessity for re-sales, and this evil is likely if permitted or encouraged, to be still heavier under the proposed system of periodical sales. So grievous indeed to all parties are the consequences of this kind of default, that the Board would have been glad if possible to put an effective bar to it by insisting on payment of ready money at sales. But this they were aware was impossible, and they have therefore approximated as nearly as they could to the desired end, by prescribing a heavy deposit (25 per cent., not however in any case to exceed 10,000 Rupees) and by limiting the term of full payment as strictly as can conveniently be done. And in order that the term so limited, may be as much as possible suited to all circumstances, they have provided that it shall be fixed yearly by the Sudder Board for each District, but shall in no case exceed fifteen days from the day of sale.

Purchase by Amlah.

70th. The rules for the prevention of undue interference of Amlah in sales, by purchase on their own account, the Board have with trifling exceptions left

untouched. They are fully convinced that the rules are altogether indispensable, and they were aware of no argument for their modification or supercession.

Notification to under-tenants.

71st. The present Law prescribes a notification to under-tenants after the full and final completion of a sale; but none during that period which intervenes between the knocking down of the lot and the completion. That the latter notification is as necessary as the former is quite obvious, and in practice all Collectors do of their own authority issue it. It seemed proper therefore to the Board to make its issue legally necessary, and they propose to do so accordingly.

Appeal from sale.

72nd. The alterations in the Law of appeal are unimportant, and chiefly directed to facilitate appeals to suitors and expedite their decision.

73rd. The right of appeal is limited to *registered* proprietors. The object of this is to necessitate registry which is now to the furtherance of litigation the defeat of justice and the injury of the rights of the State, wilfully neglected by the Zemeendars; and as it is easy for them to have their names registered if they choose it, there is no injustice in the restriction. Should it however become Law, it will be necessary to give due notice to the public in order that those not now registered may lose no time in effecting registration.

74th. The term within which an appeal may be preferred is restricted to fifteen days, but this is more than counterbalanced to the Zemeendars by allowing them to appeal either through the Collector, or direct to the Commissioner at their option. On the whole, appeal if not facilitated, is not obstructed by this alteration while the termination of the sales is clearly accelerated by it.

75th. The Draft gives the Sudder Board power at any time on sufficient cause shewn to interfere in a case of sale, and to afford to an aggrieved party such remedy either of their own authority, or by recommendation to Government, as the case may demand: but this remedy is not to extend to reversal of the sale unless the appeal to the Board is presented within fifteen days from the date of the Commissioner's order, or good reasons given for longer delay.

76th. As at present, the Draft leaves full liberty of resort to the Civil tribunal for trial of the validity of sales, and leaves to the Courts all the powers which they now possess in such cases.

Conditions of validity of sales.

77th. The conditions of validity are reduced in the present Draft from four to three.

78th. The first, is the first condition of the present law with a trifling alteration, caused by an apparent verbal error, or omission in the wording of the condition in Regulation XI. 1822.

79th. The second, third, and fourth of the existing law are abrogated, and the two conditions substituted in the Board's Draft provide briefly that due notice of

the periodical sale shall have been given, and that a balance shall be actually due either at the moment of sale, or at the previously fixed last term of payment, according as that question may be determined.

80th. These are all the conditions for which it seems to the Board necessary to stipulate.

81st. The Board have provided that interest shall not be deemed a balance for the purposes of the Act, unless at the last periodical sale of the year. This they have done in order, that every Zemeendar, unembarrassed by interest accounts, which he can never clearly understand and rarely has opportunities of checking, may know at all times throughout the year the exact demand against him, and provide accordingly, and as the whole demand of interest for the year against any one Zemeendar, will never under the proposed law be heavy, there is no apparent objection to the innovation now suggested, whilst it will tend effectually to check gross extortion and malversation by Native Amlah.

Completion of sale and disposal of purchase money.

82d. The chief alteration of the Law proposed on this head by the present Draft, is the doing away with the necessity which now exists for transmitting all sale cases, together with an account sale, to the Commissioner, who whether they be appealed against or not, has to go through every case (frequently some hundreds at a time) and confirm the Collector's proceedings.

83d. It appeared to the Board that there was nothing in the nature of a sale especially after the simplification and consolidation of the Law on that subject, to render it necessary that a Collector's proceedings in such cases should without appeal be obtruded upon the Commissioner's time and attention, any more than any other case decided by a Collector. To send them as is now the custom involves also a great delay in the completion of the sale and this in the majority of instances, an unnecessary delay. Perhaps no *single* cause connected with sales has been so detrimental to the Revenue and to the interests of individuals, as the great delay which takes place between a sale and the obtaining of possession, and every diminution of this delay which can be effected is an important advantage. By the proposed change a great diminution of delay will be secured and those sale cases in which as being unopposed, no avoidable delay should ever take place, will under the rule suggested be completed and possession of the property given in as short a time, as under all existing circumstances is possible or proper.

84th. It is provided that sales not appealed against, or respecting which no contrary orders may be received within thirty days, shall at the expiration of that time, become necessarily final and complete, and possession be immediately given.

85th. Only one objection to this rule has suggested itself to the Board, and that objection is not in their judgment of sufficient weight to out-balance the advantages of the alteration. It is this, that although the absence of appeal may prove that no individual is aggrieved by a sale, and that therefore, as far as the interests of individuals are concerned the transaction ought to be concluded; yet the absence of appeal is no proof that the interests of Government have not been

compromised by fraud or error, or collusion of parties—nay in the latter case the absence of appeal may be the very consequence of collusion, and a reason for revising the proceedings.

86th. Upon considering the subject carefully the Board could conceive no probable occurrence of this sort which could be provided against by any *abstract* report from the Collector to the Commissioner, or any summary revision by the latter Officer. Even under the present cumbrous system, such cases do sometimes happen without detection, and it was consequently inferred that no *complete* security against their occurrence could be obtained, without enforcing at least as detailed a supervision on the part of the Commissioner, and probably one of a more minute and protracted nature. The few cases of the nature contemplated are not of sufficient frequency, or importance to justify in the Board's opinion the expenditure of time and labor which so minute a supervision would demand, and the only alternative (a mere summary revision being insufficient for any purpose) was to abrogate the revision in such cases altogether, and trust to the vigilance, and sense, of responsibility of the Collector.

87th. The Board further considered that if the possibility of such errors in Sale cases were to be admitted as a reasonable ground for submitting all the Collector's proceedings to the Commissioner's revision, it would be necessary to carry out the principle to its full extent and cause Commissioners to revise all the Collector's proceedings of every kind—or at any rate those numerous proceedings of a Collector's Office in which error detrimental to Government is far more liable to occur, than in Sale cases. But this would be manifestly absurd.

88th. In the most important parts of a Collector's duty as far as the Government interests are concerned, the State must rely in a great measure upon the vigilance and efficiency of a Collector and the occasional and judicious supervision of a Commissioner. And there was nothing the Board thought in a Sale proceeding which could make it an exception to this rule.

89th. It was thought too, highly probable that the increased sense of personal responsibility which the new measure would throw upon the Collector would tend in a great degree to increase his activity, and caution, and prevent errors and omissions.

90th. In regard to the disposal of the purchase money the only alteration which requires especial notice, is that, which, in cases where the entire Zemeendary sold may have been held in known and registered shares by several proprietors, allows the balance of purchase money due after discharging the arrear, to be paid to each recorded sharer in shares corresponding with the registered interest of each in the Mehal sold. At present the want of such a provision, especially when disputes exist, among the sharers often prevents the disposal of the balance of purchase money at all, and leaves it for a long time in deposit in the Collector's Treasury. It may be further noticed, that the right to receive this balance, or any portion of it, on demand, is limited to registered proprietors. The reason for this is the same as has been already given for restricting the right of appeal to recorded owners.

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91st. The purchaser is made responsible for the Government Revenue from the day of sale inclusive. Under the actual Law he is usually responsible from the kist (inclusive) of the month in which the sale is held. The alteration appeared to the Board to be a clearer and fairer rule than the present.

Giving possession.

92nd. The present mode of giving possession of an Estate to an auction purchaser is notoriously slow and inefficacious. This is partly owing to the obscurity of the laws intended to define the rights acquired by the purchaser, and to the various constructions of those Laws which have obtained; and partly, to the inapplicability of the Agency employed for the purpose, viz. that of the Judge of the Zillah.

93rd. Primá facie the duties of a Collector should be performed by a Collector, and those of a Judge by a Judge:—the duty of the one should not interfere with that of the other. If to sell an Estate be the duty of the Collector, to give possession of it when sold, seems to follow as his duty as a matter of course. Nor is there as far as the Board can see, any disqualifying circumstance that should prevent this consequence; the Collector is on the spot, is familiar with Zemeendaree affairs, the laws and practice of Summary suits, and the relations of landlord and tenant: has usually records to guide and assist him in the duty, and has Officers at his command to whom all the operations connected with such duties are habitually known. The Judge has absolutely none of these advantages. This seems in theory to decide the question as to the comparative ineligibility of the Judge to interfere in such matters, and when the nature of the Judge's immediate duty is considered his disqualification is even strengthened. In practice as before observed, the theory is completely proved, and the Judges have been decidedly unsuccessful in giving possession of Estates to purchasers at auction sales.

94th. The Board therefore have provided in the Draft that the Collector shall do this duty, and have given him the necessary powers accordingly.

Rights acquired by a purchaser, and consequences on under-tenures.

95th. The Board have already stated that considerable confusion and difficulty is occasioned by the obscurity of the laws regarding the rights acquired by a purchaser at auction sale, and the consequences to the under-tenants, or, at least, by the difference of construction which has obtained in respect to those laws. The proposed Draft on this head, goes chiefly to simplify and explain the intent and meaning of the present law.

96th. But as the Board's construction of the existing law is opposed in some important particulars to that frequently maintained it is proper to shew as concisely as possible the grounds on which it is founded.

97th. The first enactment on the subject is the following in Regulation XLIV. 1793.

Section 5. " Whenever the whole or a portion of the Lands of any Zemeendar, independent Talookdar, or other actual proprietor of Land shall be disposed of at public sale for the discharge of arrears of the public assessments which

such proprietor shall have contracted with dependant Talookdars whose Talooks may be situated in the lands sold, as also all leases to under-farmers, and pottahs to Ryotts, for the cultivation of the whole or any part of such lands (with the exception of the engagements, pottahs, and leases, specified in Sections VII. and VIII.) shall stand cancelled from the day of sale, and the purchaser or purchasers of the lands shall be at liberty to collect from such dependant Talookdars, and from the Ryotts or cultivators of the lands let in farm, and the lands not farmed, whatever the former proprietor would have been entitled to demand according to the established usages and rates of the pergunnah or district in which such lands may be situated, had the engagements so cancelled never existed."

6. "Nothing contained in this Regulation shall be construed to prohibit any Zemeendar, independent Talookdar, or other actual proprietor of Land, selling, giving, or otherwise disposing of any part of his Lands as a dependant Talook."

7. "Nor to authorize the assessment of any increase upon the lands of such dependant Talookdars as were exempted from any increase of assessment at the forming of the Decennial Settlement in virtue of the prohibition contained in Clause First, Sec. LI. Reg. VIII. 1793. The revenue payable by such dependant Talookdars is declared fixed for ever, and their lands are accordingly to be rated at such fixed assessment in all 'Divisions of the Estate in which their Talooks are 'included.'"

98th. Upon this it is important to remark, that nothing like ousting or disposing of the "*Talookdars and Ryots*" was contemplated. Their *engagements* were cancelled, and the Zemeendar was at liberty to collect *from them* whatever the former proprietor would have been entitled to collect. This obviously implies that the "Talookdars and Ryots" were to remain in possession, an inference which is if necessary strengthened by the difference observable in the mode of treating "under-farmers" of whose tenures it is expressly said that the new Zemeendar might collect not from the under-farmers which would be the analogous mode of writing with that used for Talookdars, but "from the Ryots and cultivators of the lands let in farm," i. e. *farmers* were to be ejected. Talookdars and Ryots were to be *held in possession*, subject to enhancement of rent.

* Section 7.

'99th But to this enhancement there was an exception* in favor of "such dependant Talookdars as were exempted from any encrease of assessment at the forming of the Decennial Settlement in virtue of Section 51, Reg. VIII. 1793." It is remarkable that there is no express exemption in favor of Istimrardars as mentioned in Sections 19 and 49, Regulation VIII. 1793. The spirit however of the two Laws taken, together with Clause 5, Section 29, Regulation VII. 1799 clearly excepts such Istimrardars from enhancement after a sale.

100th. Thus by the expression and spirit of the Laws of 1793 a sale for arrears of revenue had the following effect upon the different sorts of tenures below enumerated:

1stly. *Istimrardars* were left unmolested liable to no increase and secure from dispossession.

2dly. *Talooks existing at the Settlement which were not proved at that time, or subsequently, to be liable to increase as provided in Section* 51, *Regulation VIII.* 1793, were left as they stood before the sale, i. e. the proprietors were not liable to dispossession and subject to no enhancement except upon regular suit by the auction purchaser to *prove* his title to enhance their rents.

3dly. *Talooks existing at the Decennial Settlement which had been proved liable to increase in the manner laid down in Section* 51, *Regulation VIII.* 1793, were liable to enhancement by the auction purchaser but not to dispossession of the Taloookdar.

4thly. *Talooks created since the Decennial Settlement* were liable to enhancement by the auction purchaser but *not* to dispossession of the Taloookdar. They were in fact precisely in the same predicament with the third class.

5thly. *Farmers holding under-leases made since the Decennial Settlement* were liable to immediate dispossession.

6thly. *Ryots and Cultivators of the soil holding with or without engagements* were liable to enhancement but not to dispossession.

6thly. *Holders of leases for a term of years or in perpetuity granted for the erection of dwelling houses, or buildings for manufactures, or gardens or offices for such buildings,** were liable neither to enhancement nor dispossession.

* Section 8, Regulation XLIV. 1793.

101st. To this exposition which appears to the Board obvious and indisputable they solicit particular attention, because as will be hereafter shewn it has been not only disputed but absolutely contradicted, and nullified by very high authority.

102d. In 1798 a new power was given to purchasers with regard to the above tenures (except the first second and seventh classes) and this is a very important one in the following terms:—

"But in cases of Public Sales for arrears of the public Revenue the purchaser may without any previous application to the Dewanny Adawlut eject any of the under-renters whose leases are annulled by Section 5, Regulation XLIV. 1793, *and who may decline the renewal of them* on such terms as the purchaser by the above Regulation and by Section 7, Regulation IV. 1794,* is authorized to require from them."

* Sec 7. "The rules in the preceding Section are to be considered applicable not only to the Pottahs which the Ryots are entitled to demand in the first instance under Regulation VIII. 1793, but also to the renewal of Pottahs which may expire or become cancelled under Regulation XLIV. 1793, and to remove all doubt regarding the rates at which the Ryots shall be entitled to have such Pottahs renewed, it is declared that no Proprietor or Farmer of Land, or any other person shall require Ryots whose Pottahs may expire or become cancelled under the last mentioned Regulation, to take out new Pottahs at higher rates than the established rates of the Pergunnah for Lands of the same quality and description, but that Ryots shall be entitled to have such Pottahs renewed at the established rates upon making application for that purpose to the person by whom their Pottahs are to be granted, in the same manner as they are entitled to demand Pottahs in the first instance by Regulation VIII. 1793.

103rd Up to this time there was no clear rule according to which the purchaser at an auction sale might proceed to demand enhanced rent from tenants liable to enhancement. Accordingly by Section 8, Regulation V. 1812, it was provided that a "deduction should be made from the gross rent at the rate of ten per

" cent. for the Talookdar's profit or income, over and above a reasonable allowance " for the charges of collection according to the extent of the Talook."

104th. It was also laid down that the enhanced demand could only be made on or before the month of Jeth, and in a prescribed and formal manner.

105th. This Law in no degree interfered with, although it regulated, the rights previously possessed : a purchaser might enhance the rents of the under-tenants in classes 3, 4 and 6 (para. 100) and eject them under Clause 5, Section 29, Regulation VII. 1799 if they refused to agree to his terms, but those terms were henceforth to be according to a fixed rule and the demand was to take place at a given time of the year.*

* An exception was made as to holders of collusive tenures who on proof to that effect in a summary suit might be ejected at any time of the year, Section 4, Regulation V. 1812.

106th. But when Regulation VIII. 1819 was enacted a very different view was taken of the laws above quoted, and the preamble to that Regulation shews clearly that its framers supposed the law to give a purchaser a right of immediate ejectment, instead of a right conditional upon acceptance or non-acceptance of terms formally offered, which it has been explained was all that the Regulations had hitherto bestowed upon an auction purchaser; and Section 2, of Regulation VIII. 1819, expressly quotes Section 5, Regulation XLIV. 1793 as an authority for "cancelling " of *tenures*" after a sale, though as already shewn, Regulation XLIV. 1793, only cancelled *engagements*, and by no means warranted the cancelling of *tenures* which amounts in fact to dispossession and ejectment.

107th. The declaration, however, of the old Law, which Regulation VIII. 1819, professed to contain, seems to have been at a later period and in a much more important and effectual manner taken as the correct one for the next Regulation on the subject (Regulation XI. 1822,) repeats (and almost in the same words,) the questionable exposition alluded to, and even extends and amplifies its effects.

108th. It was now declared* that " the Act of sale transfers to the purchaser all the property and privileges which the engaging party possessed, and exercised at the time of settlement free from any accidents or incumbrances that may subsequently have been imposed or have supervened thereupon, &c. &c." and again, " In pursuance of the *principle* of holding the Estate of a defaulter answerable for the Revenue in the state in which it stood at the time the settlement was concluded all tenures which may have originated with the defaulter, or his predecessors being Representatives or Assignees of the original engager, as well as all tenures, &c. &c. shall be liable to be avoided and *annulled* by the purchaser at the sale, subject only to such conditions of renewal as attached to the tenure at the time of settlement aforesaid."

* Section 29, Regulation II. 1822.

Section 30. In pursuance of the principle of holding the Estate of a defaulter answerable for the punctual realization of the Government Revenue in the state in which it stood at which time the settlement was concluded, (at which time by the dissolution of its previous engagements, Government must be considered to resume all rights possessed on the acquisition of the country, save where otherwise specially provided) all tenures which may have originated with the defaulter or his predecessors being Representatives or Assignees of the original engager, as well as all agreements with ryotts or the like settled or credited by the first engager or his Representatives, subsequently to the settlement, as well as all tenures which the first engager may under the conditions of his settlement have been competent to set aside, alter or renew, shall be liable to be avoided and annulled by the purchaser of the Estate, or Mehal at a sale for arrears due on account of it subject only to such conditions of renewal as attached to the tenure at the time of settlement aforesaid, saving always and except *bonâ fide* leases of ground for the erection of dwelling houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water courses or the like purposes, which leases or engagements shall so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect.

109th. This power of *avoiding and annulling* under-tenures is subsequently said to be "indispensable for the security of the Public Revenue" and to "*have been* always and uniformly acted upon as a fundamental principle of the Revenue system of this Presidency."

110th. The fact in short of the full power given by a sale to auction purchasers to *annual tenures* (not leases only) and eject tenants is taken completely for granted in Regulation XI. 1822 so much so as hardly needing to the *enacted*, but rather announced as an undeniable axiom, and it is remarkable as an additional proof of the construction now given to the old laws that the only law which *did* give the power (under certain conditions of ejecting tenants (Clause 5, Section 29, Regulation VII. 1799) was repealed by Regulation XI. 1822 and not *re-enacted.*

111th. There is however, one point in which Regulation XI. 1832 adheres closely to the old laws as respects the position of under-tenures. But as this adherence goes to separate the cases of two kinds of tenures which under the laws of the perpetual settlement were similarly situated, and as moreover it goes to limit the powers of auction purchasers though the whole object of Regulation XI. 1822 was to increase them; it may be very reasonably presumed to have been an oversight. It has been stated that under the old laws dependant Talooks which existed before the perpetual settlement not being those protected by Section 7, Regulation XLIV. 1793 and dependant Talooks created subsequently to the settlement, were placed in the same predicament, i. e. they were liable to enhancement of rent, but not to ejectment unless the enhanced rent were withheld. Now Section 30 of Regulation XI. 1822 gives the purchaser the power of ejecting the tenants whose tenures may have originated with the original engager, or his representatives, i. e. Talooks created since the settlement, but provides at the same time that the purchaser shall succeed to the rights of the *original engager at the time of settlement* and that annulment of tenures which the original engager under the terms of his settlement might set aside, or alter, shall be "*subject to such conditions* "*of renewal as attached to those tenures at the time of settlement aforesaid.*" A condition which clearly entitles to renewal the holder of a dependant Talook existing at the time of settlement, not protected from enhancement by Section 7, Regulation XLIV. 1793 as above stated, and belonging to class 3 para. 100, that is to say Regulation XXII. found the two descriptions of tenure (class 3 and 4) in one, and the same position it left them very differently situated. Both were liable previous to Regulation XI. 1822 to enhancement only after Regulation XI. 1822, the one was in the same position, but for the other was added liability to ejectment.

112th. This must, the Board imagine, have been an oversight.

113th. So far Regulation XI. 1822, though, as the Board think erroneously worded as to the meaning and intent of former Regulations, was at any rate clear enough in its own purport. It might mistake the object of the Old Laws, but could hardly be itself mistaken by others.

* Section 32.

114th. Another Section* however was so worded as to cast a doubt upon all that had proceeded, and to raise up difficulties and contradictions, which have existed more or less ever since. "The above rules" it was provided shall not be construed to entitle the purchasers of land at public sales to disturb the possession of any village Zemeendar, Putteedar, *Mofussil Talookdar*, or other persons having an hereditary transferable property in the land, or in the rents thereof, not being one of the proprietors party to the engagements of settlement, or his representative."

115th. This Section certainly bears out in a *considerable* degree the construction given to it in many instances—that by its operation dependant holders of any description, who may have purchased a proprietary right in their tenures, or the rents thereof, are secured from all the effects of a sale for arrears of Revenue. And as the under-tenants almost down to the very cultivators of the soil do in many parts of the Lower Provinces purchase a hereditary right in their tenures, the consequence of this Section, so construed, has been a varying and contradictory execution of the Law, an uncertainty on all hands as to the position of under-tenants, difficulty and imperfection in giving and obtaining possession of Estates purchased at public sales for arrears of Revenue, and generally distrust, misunderstanding, litigation, and discontent.

116th. Indeed it may be unreservedly asserted that though the Regulation in question by its 31st Section gives apparently much greater power to auction purchasers than they ever possessed before, yet in consequence of the contradiction implied in Section 32, the real and practical effect of this Law has been to narrow the benefits of a purchase, and impede the collection of the Revenue.

117th. The construction of this Section, which has been stated to be the usual one has been thus remarked on by the Board on a former occasion.

118th. "It has on some recent occasions been held that dependant Talook-
"dars created since the settlement came within the description of persons protected
"by the above proviso.

119th. "The Board however entertain no doubt whatever that this opinion
"is incorrect.

120th "It will be sufficient to attend carefully to the wording of the Section
"to be satisfied that the persons designed to be protected are parties possessing a
"full and fixed right of what is termed in the language of our Regulations 'pro-
"perty' in the land, or its rents, that is parties possessing such a right as that it is
"possible that they might be 'proprietors, parties to the engagement of settlement'—
"while it needs not be stated that it is very certain that dependant Talookdars never
"could be parties to an engagement of settlement, and it thence follows that they
"are not of the class of persons to whom the Section was intended to apply.

121st. "The interest of dependant Talookdars as before mentioned in
"paragraph 2nd of this letter has been defined by Section 7, Regulation VIII.
"1793, to be only a 'leasehold' and not a proprietory 'interest.'

122nd. "The Section in question of the Regulation of 1822 points evident-"ly to the case of persons having fixed properties in Mehals, though they may not "in virtue of that right have engaged with Government for the Revenue,—such as "the Village Zemeendars, Putteedars, &c. of the Upper Provinces. The meaning "will be more plainly seen on comparing Section 32, with Section 16 of the Regula-"tion where the same class of persons are spoken of as "*Proprietors*," "*Putteedars*," "*Village Zemeendars*" or the like, who at the time of the settlement held distinct "properties,* though paying their revenue through the recorded Malgoozar."

* Note.—Section 32, Regulation XI. 1822 would however protect *Talookdars, the actual proprietors* of the lands composing their Taloolks, "who did not apply for separation within the time limited by Section 14, Regulation I. 1801." That Section declares that such Talookdars so neglecting to apply should lose their right to separation, though "*in other respects*" the rights of the Talookdars were not to be in any degree affected.

123d. This construction of Section 32 is entirely consistent with the manner in which the mention of the proviso alluded to, is introduced in it. There is no where in the previous Sections, a hint of there being any exception to, or limitation of the general and indispensable principle declared in them, being to be found in this Section. On the contrary, that general principle is stated in terms the most express and unqualified, and as has been remarked, as if it were an absolute and necessary consequence of the act of sale for arrears. And Section 32 is added, not as *exceptive*, but as *precautionary* to prevent the *misapplication* of the powers given by the preceding Sections to a purchaser over tenures created since the settlement, to tenures of property, which though situated within the Estate sold, are not derivative either from the party who originally entered into engagements at the time of settlement, or from any of his successors down to the defaulting engager, and are, therefore, not involved in the act of sale of the Defaulter's Estate or interest.

124th. The Board need not pursue the argument further upon the wording of the Law, or dwell in addition to the considerations already stated upon the great improbability, to say the least of it, that it could be meant by Section 32 to nullify, in regard to one great class of dependent tenures, the rule which is broadly laid down in Section 30 in respect *to all* dependent tenures created since the settlement, or to render nugatory and useless the special power of protecting such dependent tenures, which is conferred by Section 31, in so careful and guarded a manner on the Government alone. They think, however, that it may be satisfactory to state here, in the words of the framer of the Regulation under consideration, the views by which he was guided in drawing this part of it. The following is an extract from a note recorded on the proceedings of Government, under date the 1st November, 1822, by Mr. Secretary Mackenzie, in submitting for approval the final draft of Regulation XI. 1822, to which the Board have been permitted to refer.

125th. "It may, however, be proper to observe that this Regulation contains "a very important concession to the inferior proprietary classes, and one which the "auction purchasers will be apt, though erroneously, to consider as an encroach-"ment on the rights acquired by them, and that is the *declaration* that their pro-"perty is limited to what may have been that of the *former engager* at the *time* of "*settlement*. This doubtless is the equity of the case, and is likewise the spirit of "the former rules on the subject, but as the point was never declared heretofore "with sufficient precision the auction purchasers have been encouraged to assert "that the *entire* and absolute property became theirs by purchase."

126th. " Thus it will be seen that the anxiety was to preclude *more* from " being held to be conveyed to a purchaser at a sale than the rights of the first en- " gager at the settlement, but that it was not sought to deprive the purchaser, to any " extent, of any of those rights."

127th. The Regulations in force are further defective inasmuch as they do not distinctly provide for the speedy adjudication of questions of right between purchasers and their tenants, arising out of the rules enacted, and as no possession can be called complete until these cases are settled, a great additional difficulty has been opposed to auction purchasers in their attempts to obtain possession of their purchases.

128th. In the Draft now submitted the Board have endeavoured to reduce the law to its original purport as it stood in 1793 to obviate contradictions, errors and misconstructions, and to provide clearly for the speedy decision of such disputes as always arise between a purchaser and his under-tenants relative to their respective rights under the law.

129th. The mode in which this has been effected will be clearly understood from the following compendious statement of the liabilities of the different sorts of tenures consequent upon a sale previous to the enactment of Regulation XI. 1822, and subsequent to that Regulation, and also their proposed liabilities under the present Draft.

Tenure.	*Position and Liabilities previous to Regulation XI. 1822.*	*Position and Liabilities subsequent to Regulation XI. 1822.*	*Position and Liabilities by proposed Draft.*
Istimrardars.	Not liable to dispossession or enhancement. In case of demand of increase by the new purchaser and resort to Law the burthen of plaint to be on the purchaser, but that of proof (of Istimraree tenure) to be on the tenant. Suit to be tried as a regular suit in a Civil Court.	The same.	The same with this alteration that the suit (on the plaint of the purchaser) to be tried as a summary suit before the Collector.
2. Talooks existing at the perpetual Settlement which were not proved at that time or subsequently to be liable to increase as provided in Sec. 51, Regulation VIII. 1793.	Not liable to enhancement except upon proof, (the burthen of which is on the purchaser,) in a regular suit in a Civil Court that the tenure is liable to increase for the reasons specified in Section 51, Regulation VIII. 1793. Not liable to dispossession.	The same.	The same with this alteration, that in case of demand of increase by the purchaser and resort to Law, the case on the suit of the purchaser to be tried as a summary suit before the Collector, and the burthen of proof on the tenant who must shew that he belongs to this class.

Tenure.	*Position and Liabilities previous to Regulation XI. 1822.*	*Position and Liabilities subsequent to Regulation XI. 1822.*	*Position and Liabilities by proposed Draft.*
3. Talooks existing at the perpetual Settlement which have been proved liable to encrease in the manner laid down in Section 51, Regulation VIII. 1793.	Liable to enhancement on or before Jeth by the auction purchaser summarily, but not to dispossession, except on refusal to engage at the terms proposed under Clause 5, Section 29, Regulation VII. 1799.	Liable to enhancement by the auction purchaser summarily, but (in consequence of the repeal of Clause 5, Section 29, Regulation VII. 1799,) not liable to dispossession in case of refusal, but only on default proved in a summary suit under the Clauses of Section 15, Regulation VII. 1799. NOTE.—However that Section 10, Regulation VIII. 1831, which prohibits the hearing of summary suits for enhancement, completely nullifies the law in respect to this class of tenants.	Liable to enhancement summarily on or before Jeth by the auction purchaser, but not to dispossession, except upon default of payment of enhanced rent demanded or adjudged, and after a summary suit before the Collector, i. e. precisely as the foregoing
4. Talooks created since the perpetual Settlement.	Liable to enhancement on or before Jeth by the auction purchaser summarily, but not to dispossession, except on refusal to engage on the terms proposed under Clause 5, Section 29, Regulation VII. 1799, they were in fact situated precisely as the foregoing.	Annihilated by the Act of Sale, and the holders liable to be forthwith ejected and dispossessed by the purchaser without any limit or condition.	Liable to enhancement on or before the month of Jeth.

5. Farmers holding under-leases made since the Decennial Settlement.	Liable to dispossession on or before the month of Jeth.	Annihilated by the Act of Sale, and the holders liable to be forthwith ejected and dispossessed by the purchaser without any limit or condition.	Liable to dispossession on or before the month of Jeth.
6. Ryots and Cultivators of the soil, including Koodkasht and Kudeemee Ryots.	Liable to enhancement on or before the month of Jeth by the auction purchaser summarily, but not to dispossession, except on refusal to engage on the terms proposed under Clause 5, Section 29, Regulation VII. 1799, precisely as classes 3 and 4.	Annihilated by the Act of Sale, and the holders liable to be forthwith ejected and dispossessed by the purchaser without limit or condition. Except Khoodkasht Kudeemee Ryots, who need not be called upon to pay a higher rent to the purchaser than was demandable by the former proprietor, and cannot be ejected.	Liable to enhancement summarily on or before Jeth by the purchaser, but not to dispossession, except on default of payment of enhanced rent demanded or adjudged, and after a summary suit before the Collector precisely as classes 3 and 4.
7. Holders of leases for a term of years or in perpetuity, granted for the erection of dwelling houses or buildings for manufactures or gardens, or offices for such buildings.	Not liable to enhancement or dispossession.	The same.	The same.

NOTE.—The above relate to bonâ-fide holdings of the descriptions quoted. Collusive tenants under all three systems may be ousted at any time of the year, after proof of collusion in a summary suit, which suit however, according to the proposed Draft, must be filed within two years from the completion of the sale.

Power of a Collector in cases of contempt.

130th. A slight alteration has been introduced under this head. The law at present gives the power of fining to the extent of Rupees 200, commutable to fifteen days imprisonment. In the Draft the fine is made 100 Rupees, and the power of imprisonment extended to one month—this was done to make the terms of the commutation correspond better than they do in the present Law.

Conclusion.

131st. The Board are of opinion that the law should be introduced first into Bengal and Behar and Benares, and *afterwards* with such modifications as may be found necessary, into the Ceded and Conquered Provinces and Cuttack.

132nd. In framing its provisions they have directed their attention especially to the first two Provinces, and it is probable that considerable alteration may be necessary to adapt the law to other parts of the Empire.

133rd. I am directed to transmit with this Letter and the Draft, copies of Minutes recorded respectively by the Officiating and Temporary Member under date 20th July, 30th May, 29th September, 1837, and 8th Instant, together with a Sketch prepared by Mr. Walters of a more comprehensive law on the subject.

133rd. Mr. Walters is strongly of opinion, that not the Sale Laws only but all the laws relating to or bearing upon the realization of Land Revenue require revision and re-consolidation, and his sketch is devised for that purpose.

134th. The Board without denying the propriety of revising as soon as circumstances may permit, the laws alluded to by Mr. Walters, and indeed all the Revenue Code, do not feel called upon at the present juncture to undertake so weighty and difficult and lengthy a duty which is in fact the province of the Indian Law Commission. They have been called upon by the Right Honorable the Governor of Bengal, in consequence of the peculiar urgency of the case, to revise the Sale Laws, and having done this to the utmost of their ability they feel that their duty is fulfilled.

135th. The several constructions of Law principles, opinions, recommendations and suggestions contained in this Report have of course been most attentively deliberated upon and sanctioned by the Board, but the merit of digesting, arranging and drawing up this comprehensive, perspicuous and elaborate answer to your predecessor's letter of the 6th July 1837, exclusively belongs, the Board direct me to observe, to their Secretary, Mr. F. J. Halliday, to whom they feel exceedingly indebted, and they render this just tribute as the only meed they have the power to award.

I have the honor to be,

Sir,

Your most obedient Servant,

E. CURRIE, *Offg. Secretary.*

SUDDER BOARD OF REVENUE,
FORT WILLIAM,
The 13th March, 1838.

DRAFT OF AN ACT.

Rescission of previous Regulations.

Section 2, Regulation III. 1794, and so much of Regulations XII. 1796 and V. 1810, as relate to public sales for arrears of Revenue, also such parts of Sections 3, 24 and 25 Regulation XIV. 1793, Sections 7 and 31, Regulation VI. 1795, Section 23, Regulation VII. 1799, Section 31, Regulation XXVII. 1803, and of any other Regulations in force which prescribe or shall be construed to prescribe that the Revenue Officer shall of necessity issue any Tulub Chittee Dustuk or other process of demand on persons from whom arrears of Revenue or other demands similarly recoverable may be due, or that they shall attach the Estates or Farms in the possession or management of such defaulters before bringing their property to sale, as well as such part of the abovementioned or other Regulations which restrict, or can be construed to restrict the powers of the Revenue Officers in selecting Lands for sale on account of arrears of public Revenue or the period of sale, and the whole of Regulations II. 1822 and VII. 1830, are hereby rescinded.

Provided always, that nothing in this Act shall be understood to interfere with or limit the provisions of Regulation I. 1801, which give the Board of Revenue, or other authority exercising the power of that Board, power in certain cases to cause realization of Revenue by the other process than sale.

Interest on balances.

2nd. It shall be competent to the Governor of Bengal before the close of each Revenue year, to declare the rate of interest which during the year ensuing will be charged upon all arrears of Revenue, and to notify the same by advertisement in the *Calcutta Gazette.*

Periodical sales and their exceptions and adjournment of sales.

3rd. The Sudder Board of Revenue before the close of each Revenue year shall determine with regard to each District or Zillah under their jurisdiction the fixed period at which during the year ensuing sales shall only be held for realization of arrears of Revenue, and shall publish a notification to that effect in the *Calcutta Gazette*, and the several Collectors shall on receipt of the *Gazette* containing the above described notification, cause the said notification to be published without delay within their several jurisdictions.

4th. Estates under the Court of Wards shall not be brought to sale for balances during the period of management by the Court, and no Estate shall be liable to be sold for balances on account of a period during which it was under the management of the Court of Wards.

5th. All Estates upon which up to sunset of the day preceding that on which the periodical sale may commence a balance of Revenue may be due shall on the day fixed for the sale, or on the day or days following until the whole sale is concluded, be put up to public auction by and in the presence of the Collector or

other Officer duly authorized in that behalf, and sold to the highest bidder, and no payment or tender of payment made subsequent to the time abovementioned shall bar or interfere with the sale either at or after the conclusion of that transaction.

Provided however, that in case any defaulter subsequent to the time abovementioned and before the Estate in default is put up for sale shall tender to the Collector the total balance due, together with the full amount of a penalty upon the same calculated at the rate of one anna in the Rupee per day from the time abovementioned, viz. sunset of the day preceding that on which the periodical sales may have commenced, up to the time of tender aforesaid. The sale of the Estate in default shall be barred.

Provided also, that the Sudder Board or the Commissioner may on special recorded grounds exempt any Estate from sale, by an order to that effect to the Collector previous to the day fixed for sale.

6th. Should the Collector on the day appointed for a periodical sale be unable from sickness or other unavoidable cause to commence the sale, or having commenced it, be unable from the same causes to proceed with it, he shall be competent to adjourn it to the day following, recording his reasons for such adjournment, and communicating a copy of the record to the Commissioner and so on, should it be necessary from day to day, until he may be able to commence the sale, or proceed with it, reporting the same each day to the Commissioner of the Division and giving due notice daily of the adjournment by a written proclamation in his Cutcherry, or Office, with exception to such adjournment so made, proclaimed, and reported, the sale shall commence on the day fixed and be continued from day to day at every regular sitting of the Collector until all Mehals in balance have been disposed of.

7th. Previous to putting up any Mehal to sale it shall be the duty of the Collector to satisfy himself that a balance of Revenue is due from the Estate about to be sold, and to credit with or without application to that effect from the defaulter, all deposits, or other sums in his Treasury due to the defaulter, unless there shall be valid cause to the contrary, or unless the party owning the deposit should object to such a credit being made. In any case however the reasons for withholding credit whether the same be applied for or not must be duly recorded in the proceeding of sale.

8th. All demand on account of interest shall be realized, together with the principal due on the occasion of the last periodical sale of the year, and no Estate shall be liable to sale, for mere balance of interest, excepting at the last sale of the year.

Coparceners

9th. Coparceners in entire Estates, the relative proportions of whose shares, together with their names may be defined and registered in the Collector's Office are empowered at any time previous to sunset of the day immediately preceding that on which the periodical sale may commence, to tender to the Collector their

proportions of the balance due according to the Collector's accounts, and the Collector shall receive and pass to credit of their several shares such tendered proportion, and in the event of a sale of any part of the Estate becoming necessary for the liquidation of any remaining balance, the undivided portion or portions of the defaulting shares only shall be sold and not those of the sharers who shall have paid their proportions of the balances, and the purchasers of the share sold will succeed only to the joint rights in the Mehal possessed by the defaulting sharers and hold their shares in coparcenary with the sharers whose shares have been preserved from sale acquiring no separate rights in virtue of purchase and which can only be acquired by a separation concluded under the provision of Regulation XIX. of 1814.

In case however, the Collector should have no authentic information of the balance due from each sharer in such Estates, the sharers shall nevertheless be empowered to preserve their shares from sale in the manner above described by paying in severally such proportions of the entire balance as their several recorded shares may bear to the entire Estate.

Persons having contingent interest in Mehals under sale.

10th. A Collector shall receive any amount of balance due from any Estate from any person who may tender it in liquidation of such balance, and the Collector shall pass the same to credit of the Estate for the liquidation of the balances of which it may have been tendered, and shall grant to the party making such tender a receipt in the following form :

"Received from A. B. Company's Rupees ——— being on account of balances of Land Revenue of Mehal ——— Pergunnah ——— Zillah ———."

And a receipt so granted shall be deemed in any Court of Justice sufficient evidence of payment.

Conclusion of sale and completion of purchase money.

11th. The party or parties to whom a Mehal may be knocked down, shall be called upon to deposit forthwith either in cash, or notes of the Bank of Bengal, 25 per cent. of the amount of the bid, and in default of such deposit the Mehal shall be immediately put up again and re-sold. And the Collector shall be competent to impose upon the defaulting bidder, for every such case of default a fine not exceeding Company's Rupees 100, and if the fine be not paid, to send the delinquent to the nearest Magistrate who shall confine him in the Civil jail until the fine be paid, but not for a period exceeding one month.

Provided however, that the deposit demandable from a purchaser shall in no one case exceed the amount of Company's Rupees 10,000, which shall be the highest amount of deposit leviable on any one purchase.

12th. The Sudder Board of Revenue shall fix previous to the commencement of the year, a period within which in each District under their jurisdiction during the year ensuing the full amount of purchase money at public sales shall be made good, but such period shall in no case exceed fifteen days from the day of sale: and in default of payment within the prescribed period, the sale shall be null and

void. The deposit shall in such case be forfeited to Government and the Estate advertised for re-sale.

Purchase by Amlah.

13th. Should the Collector, or other duly authorized person conducting the sale either at the time of concluding the sale, or at any subsequent time before the sale may have become final see reason to believe, that the real purchaser is a person on his establishment, or in any way connected as being a servant or nominee of Government with the management of the collections of the Zillah or Pergunnah within which the lot sold may be situated, he shall nevertheless (if the question be raised previous to the conclusion of the sale) knock the lot down, and in all such cases it shall be his duty to institute an immediate investigation in order to bring the matter to proof, and the result of the proceedings that may be so held, shall be submitted to the Commissioner or other authority competent to receive, who will after investigation either dismiss the case if he consider it not proved, or if it be proved submit it for the orders of the Sudder Board of Revenue, or other authority exercising the powers of that Board, who will if it shall appear expedient direct the lot to be escheated to Government and whose order shall be final. The amount of the purchase money shall in that case be credited to the defaulter in the same manner as if the sale stood good.

Notification to under-tenants.

14th. As soon as a Mehal is knocked down the Collector shall notify the same by written proclamation in his Cutcherry and in the Cutcherries of the Moonsiff, and Darogah of Police of the jurisdiction or jurisdictions within which the Mehal may be situated forbidding the Ryots and under-tenants to pay rent to the defaulting proprietors from the date of the notification up to that of the subsesequent notice hereinafter prescribed by Section 22 on pain of not being entitled to credit in their accounts with the defaulter or his successor for any sums paid within the period aforesaid.

Appeal from sale.

15th. Registered Proprietors of an Estate sold as above and no others shall have a right of appeal against the sale to the Commissioner of the Division either direct or through the Collector—such appeal if preferred direct to Commissioner must be made within fifteen days, and if through the Collector within ten days from the date of sale. In the former case the Commissioner shall without delay call for the proceedings of the Collector, together with such information as he may deem necessary. In the latter case the Collector upon the presentation of the petition of appeal shall immediately transmit it and the proceedings of the sale to the Commissioner, together with such remarks and explanations as may seem called for, and the Commissioner after perusing the papers transmitted by the Collector, and if necessary calling for such further information and explanation as he may require shall pass a definite order annulling or confirming the sale, and such order of the Commissioner shall be open only to appeal as hereinafter stated.

16. The Sudder Board of Revenue shall be at all times in cases of confirmation of sale competent on sufficient grounds shewn to call for the record of a sale confirmed by a Commissioner, and in case it shall appear that any gross wrong or injustice, or illegality has been committed by any Government Officer in the

conduct of such sale to issue such orders for the redress of the evil as may appear requisite. But no sale shall be annulled by the Sudder Board unless the circumstances connected with it shall have been brought to the notice of the Board within fifteen days from the date of the Commissioner's order of confirmation, excepting always when the Sudder Board shall be satisfied that the appeal could not have been made within the prescribed period.

Conditions of validity of sale.

17th. Sales of land for arrears of Revenue shall be liable to be annulled, set aside, or altered by the Revenue Authorities, or any Court of Judicature on account of any error, omission or irregularity whatever, not involving the failure of one or more of the conditions hereinafter declared to be essential to the validity of sales, but any person who may consider himself aggrieved by any act, or circumstance connected with a sale not amounting to such failure, shall have his remedy in an action for damages against the individual by whom or by whose fault he may have been endamaged.

18th. The following are the conditions essential to the validity of a sale:

First. That the Lands or Mehal sold from the Estate in arrear, or parcel of such Estate and are liable to sale consistently with the principle and provisions declared and enacted in this Act, or if not the Estate, or parcel of the Estate as aforesaid that they are the recorded property of the defaulter or defaulters from whom the balance is due or have been specially pledged to Government to answer the demand.

Second. That the date or dates of periodical sales for the year shall be notified in the *Calcutta Gazette* in the manner prescribed by Section 3d, and shall have been proclaimed by the Collector during the first month of the year of sale by written advertisement in his and the Judge's Cutcherry.

Third. That a balance of Revenue or Interest be due from the Mehal up to the hour of sunset of the day immediately preceding that on which the periodical sale may commence, and that all deposits in the Collector's treasury up to the said hour and date, legally due to the recorded proprietors have been duly credited to them in payment of balances or valid reason assigned by the Collector in his sale, proceeding for not crediting them with the same.

Completion of a sale and disposal of purchase money.

19th. All sales against which no appeal may have been preferred, and regarding which no orders to the contrary may have been received from the Commissioner within 30 days from the date of sale, or which may not be provided for by Section 12 shall at noon on the thirtieth day from the day next following that on which the sale took place be final.

In such cases and also on receipt of confirmation of sales, against which appeals may have been made, and which may not fall under the provisions of Section 16, it shall be the duty of the Collector immediately to register the name of the purchaser to notify the completion of the purchase by written proclamation in his own Cutcherry, and those of the Moonsiff and Darogah of the jurisdiction within

which the Mehal may be situated, and to deal with the deposit of purchase money as follows: that is to say, he shall first make good to Government therefrom the full amount of Revenue due from the Estate up to the day of sale, together with all interest and charges upon the same up to the date of such adjustments of accounts. The residue shall belong to the late recorded proprietors in shares proportioned to their recorded shares in the late Estate, and shall be payable in such cases to their receipt on demand, or if their share have not been recorded it shall belong to them all jointly, and be payable to them as such to their joint receipt on demand, but no claim for residue of purchase money if preferred by any other than a recorded proprietor shall be allowed. Should the sale be annulled by the Commissioner, the Collector shall notify the same in like manner as the confirmation, and shall refund to the purchaser on demand his purchase money, with interest at the rate for the year in the manner provided by Section 2. But in such case the Commissioner shall declare at the time of reversing the sale by whom the interest is eventually to be paid.

20th. The purchaser of an Estate, the sale of which has been confirmed shall be answerable for the Government Revenue from the day of sale inclusive; but no interest shall be chargeable upon any balance demandable from him on account of the interval between the date of the sale and that of the completion of the prescribed measures for giving him possession, namely, the delivery of the "Bye-nameh" and "Umal-nameh," and the prescribed publication of notice of transfer in the Estate.

21st. If after a sale has become final. it shall be proved by a suit decreed in Court, that the Estate has been illegally purchased by a Revenue Officer of Government, whether the suit shall have been instituted by the Collector on the part of Government or by the former owner of the Estate sold, or by any other party having an interest in the Estate, in case there be no appeal lodged from the decree or there be appeal, the Court passing the final judgment shall forward the decree to the Governor General in Council, in order that a confiscation of the Estate may be declared and the Estate restored to its original proprietor.

22d. No person shall be entitled to contest the validity of a sale after having received any portion of the purchase money, nor shall any part of the sale proceeds of an Estate be liable for the debts of the late proprietor, whilst the validity of the sale may be pending in the Courts.

23d. If the sale of an Estate be reversed by a decree of Court by reason of the failure of any of the conditions specified in Section 18, the purchase money shall be refunded to the purchaser by Government, together with interest at the rate notified for the year, in the manner provided by Section 2.

Giving possession.

24th. The Collector shall give possession to the purchaser by publishing the completion of the sale in the manner provided in Section 19.

He shall also deliver to the purchaser a bill of sale, specifying the name of the Mehal sold, the name or names of the late recorded proprietors, the Sudder Jumma,

the date of sale and confirmation (or completion), the price, and the succession of the purchaser to all the rights of the former ruined proprietor. In the event of any further measures being necessary to put the purchaser in possession, the Collector on the petition of the purchaser, shall put him in possession of the Estate as specified in the bill of sale, and for that purpose shall have and exercise all the powers and exemptions at present possessed and exercised by Courts of Civil Justice, for giving possession of landed property under decrees of Court.

Rights acquired by purchaser.

25th. Upon the completion of the sale of an Estate for arrears of Revenue, not being the land from which the arrear was due, the purchaser shall be held to have acquired only the rights, interests and title possessed by the defaulter or late proprietor in like manner as if the land had been sold by private sale or under a decree of Court.

26th. If the Estate sold be that on which the arrear was due, the act of sale shall render liable to enhancement of rent in the manner hereinafter provided —all under-tenures whatever within the Estate sold, with following exceptions, viz. Istumrary tenures of the nature described in Section 19, Regulation VIII. of 1793, and Talooks existing at the time of the Decennial Settlement, and not at the time or subsequently proved to be liable to increase of assessment in the manner and for the reasons specified in Section 51, Regulation VIII. of 1793, and also all tenures held under bona fide leases, temporary or perpetual, for the erection of dwelling houses, manufactories, or offices for the same. or for gardens, tanks, canals, or like purposes, all of which three descriptions of tenure, shall continue in force, and effect so long as the stipulated rent is paid, and in the case of the last mentioned tenure; so long as the lease continues, if that be temporary, and so long as the land is appropriated to the purpose or purposes specified.

Provided always that in the case any auction purchaser shall proceed by summary suit against any tenant of the description above excepted for increase of rent on the plea that such tenant does not in fact belong to the excepted class, the burthen of proof of right to exception and exemption from increase of rent shall be on the tenant sued.

27th. It is prescribed by Sections 9, 10 and 11, Regulation V. 1812 that no rents of under-tenants shall be liable to enhancement during the current Bengal or Fussily year, unless written engagements for enhanced rent have been entered into by the parties or a formal written notice have been served on the tenant, on or before the month of Jeth, notifying the specific rent under the landholders right of enhancing it to which he will be subject for the Bengal or Fussily year, and that in all practicable cases this notice shall be served personally on the tenant, but that if he abscond, or conceal himself, so that it cannot be served personally upon him, it shall in the presence of two or more respectable witnesses, be affixed at his usual place of residence, which latter process shall, in such case be deemed and taken to be sufficient service of the notification in question.

28th. In modification of Section 10, Regulation VIII 1831, it is hereby declared that under the above limitations and conditions it shall be competent to purchasers of lands sold for the realization of arrears accruing on them at any time

within two years from the date of sale, to enforce demands for enhancement of rent, against their under-tenants by distraint, or by summary suit under Regulation VIII. 1831, and Collectors, or other Officers duly empowered to try and determine such suit or suits succeeding distraint under Regulation V. 1812, shall in cases in which the legality or justice of the demand may be disputed summarily, adjudicate between the parties both as to the legality of the demand under Regulations VIII. and XLIV. 1793, or other Regulations in force regarding the rights of under-tenants to hold their lands exempt from enhancement of rent, and as to the justice and fairness of the demand as regards the extent or quality of the land comprising the tenure, and the custom of the District or Pergunnah with respect to rents. Provided however, that such decisions shall be contested only by regular suits in the Civil Courts.

29th. Should a purchaser of a Mehal by auction for an arrear of Revenue, be of opinion that any tenures in the Estate he has thus purchased are fraudulent, or fictitious, or held collusively at an inadequate Jumma, he shall be competent to sue for the ejectment of the tenants thereof at any time within two years from the completion of the purchase, and such suits shall be tried by the Collector as summary suits in the manner laid down in Regulation VIII. 1831, and if the tenure be proved to the Collector's satisfaction to be fraudulent or fictitious as aforesaid he shall pass a decree for the ejectment of the tenant of the same, placing the plaintiff in full possession of the tenure. With exception to the fraudulent and fictitious tenants abovementioned, no under-tenant in an Estate sold for the recovery of arrears of Revenue shall be liable to be dispossessed by the purchaser except by a decree in a regular suit so long as he may pay the rent of his lands, either according to engagements with the said purchaser or agreeably to the notice for enhancement served upon him, or according to the rate fixed by the Collector's decision in a summary suit tried as above prescribed. Provided always that every purchaser aforesaid, (and all other owners and managers of land) shall be authorized and empowered to oust at their own discretion, on their own responsibility and without application to the Courts, all tenants holding under-written temporary leases or engagements on the expiration of such leases or engagements.

30th. No summary suit shall be allowed at the instance of a proprietor or his representative, if the proprietor have not recorded his name in the Register of Mutations,* or shall not have applied to the Collector for that purpose.

* Within one year from the date of the promulgation of this Regulation.

31st. Arrears that may be due at the time of sale from the under-tenants to the defaulter shall be recoverable by him by a suit in Court in prescribed form.

32d. With a view to enable the Revenue Authorities to maintain due order at all times in their Cutcherries it is hereby enacted, that all Covenanted Revenue Officers shall be competent to punish any contempt, outrage, or disturbance committed in open Cutcherry in their presence by fine to an extent not exceeding 100 Rupees, commutable if not immediately paid, to imprisonment for a period not exceeding one month, and the Magistrate to whom such an offender shall be forwarded, shall enforce the execution of the order.

E. CURRIE,
Officiating Secretary.

(4)

FORT WILLIAM,
LEGISLATIVE DEPARTMENT,
THE 14TH OCTOBER, 1839.

The following Draft of a proposed Act was read in Council for the first time on the 14th October, 1839:

ACT No. —— of 1839.

An Act for amending the Bengal Code in regard to Sales of Land for Arrears of Revenue.

Preamble.

I. Whereas it is expedient, with a view to the benefit of the Agricultural Community, to discontinue the levy of interest and penalty upon arrears of Revenue; to reduce the number of periodical sales of Land; to provide for the absolute sale, after due notification, of any Mehal which may not have punctually paid up the whole of the current Revenue on appointed days, in order that sufficient publicity and certainty may be given to such sales; and otherwise to amend the Laws for the realization of the public demand: It is hereby enacted that from the day of Regulation XI of 1822 and Regulation VII of 1830 of the Bengal Code, except in so far as they rescind other Regulations or parts of Regulations, are repealed.

Interest and Penalty abolished.

II. And it is hereby enacted, that there shall be no demand of interest or penalty upon any arrear of Revenue which shall fall due after the date specified in Section I of this Act.

Absolute Sale of Estates in arrear of Current Revenue at certain dates.

III. And it is hereby enacted, that upon the promulgation of this Act the Sudder Board of Revenue at Calcutta shall determine upon what dates all arrears of current Revenue shall be paid up in each permanently settled District in the Provinces of Bengal, Behar, and Orissa, in default of which payment the Estates in arrear in those Districts, except as hereinafter provided, shall absolutely be sold at Public Auction to the highest bidder. And the said Board shall give notice of the dates so fixed in the Calcutta Gazette, and shall direct corresponding publication to be made, as far as regards each District, in the language of that District, in the Office of the Collector, or Deputy Collector, or other Officer duly authorised to hold sales under this Act, in the Courts of the Judge, Magistrate, Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, and at every Thannah Station of that District; and the dates so fixed shall not be changed until the same be changed by the said Board by advertisements and notifications in the manner above described, such advertisements and notifications to be issued, on every occasion after the first above provided for, before the close of the year preceding that in which the new date or dates are to take effect.

After which payments not to be received.

IV. And it is hereby enacted, that in Districts for which the dates of payment shall be notified in the manner prescribed in Section III of this Act, no payment on account of the Revenue of any Estate in arrear shall be received after the dates so notified, except as provided in Section XI of this Act.

Notification of Absolute Sale in Bengal, &c.

And the Collector, Deputy Collector, or other Officer as aforesaid, in every such district, shall, as soon as practicable after the said dates, issue notifications in the language of his District to be affixed in his own Office, in the Court of the Judge within whose jurisdiction the estate advertised lies, in the Courts of the Principal Sudder Ameens, Sudder Ameens and Moonsiffs and at every Thannah Station in his District, and in the Malgoozaree Cutcherry of each Estate advertised, or in some conspicuous place thereon, in which notifications shall be specified the Estate or Estates which will be absolutely sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be more than one month from the date specified in Section III of this Act nor less than fifteen days from the date of affixing the notification in his own office.

Elsewhere not without sanction.

V. And it is hereby enacted, that in Districts not permanently settled, and in the Province of Benares, no Estate, and no rights, interests, or title in an Estate, shall be advertised for sale for the recovery of arrears of Revenue without the special sanction previously obtained of the Sudder Board of Revenue within whose jurisdiction the same may be; but when an advertisement of sale in such Districts or in the said Province shall be so sanctioned, the Estate or Estates whereof the sale has been so sanctioned shall be advertised for absolute sale in the manner

prescribed in Section IV of this Act; and all the Provisions of this Act, so far as they are applicable, shall apply to Estates so advertised.

Process for arrears other than Current Revenue.

VI. Provided always, and it is hereby enacted, that no Estate shall be sold for the recovery of Arrears or Demands of the description mentioned below, otherwise than after a notification in the language of the District, specifying the nature and amount of the arrear or demand, shall have been affixed, for a period not less than fifteen days before the day of sale, in the office of the Collector, Deputy Collector, or other officer as aforesaid by whom the sale is intended to be made, in the Court of the Judge within whose jurisdiction the Land advertised lies; in the Courts of all the Principal Sudder Ameens, Sudder Ameens and Moonsiffs in the District, and at the Police Thannah of the division in which the Estate to which the notice relates, or part of it is situated, the same to be certified by the receipt of the officer at whose office such publication may have been made; and also at the Cutcherry of the Malgoozar of the Estate, or at some conspicuous place upon the Estate, the same to be certified by the Peon or other person employed for the purpose.

First.—Arrears other than those of the current year, or of the last four months of the preceding year.

Secondly.—Arrears the payment of which has been suspended over one periodical sale by competent authority.

Thirdly.—Arrears of Revenue due on account of other Estates.

Fourthly.—Arrears due on account of Tuccavy, Poolbundee, or other demands not being on account of Revenue, but being recoverable by the process for the recovery of Arrears of Revenue.

Adjournment.

VII. And it is hereby enacted, that in case the Collector, Deputy Collector or other Officer as aforesaid, shall be unable from sickness, from the occurrence of a holiday, or from any other cause to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it, he be unable, from the like cause, to proceed with it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by a written proclamation stuck up in his Cutcherry, and so on, from day to day, until he shall be able to commence upon, or to proceed with, the sale, but with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

Regular Order.

VIII. And it is hereby enacted, that on the day of sale fixed according to Section IV of this Act, sales under this Act shall proceed in regular order, the Estate to be sold bearing the lowest number on the Towjee or rent roll of the District being put up first, and so on, in regular sequence: And it shall not be lawful for the Collector or other Officer as aforesaid to put up any Estate out of its regular order by number.

If no bid.

IX. And it is hereby enacted, that in the event of there being no bidders for an Estate advertised for sale as aforesaid it shall be competent to the Collector or other Officer as aforesaid, with the sanction of the Commissioner of Revenue, instead of proceeding to advertise such Estate again for sale, to let such Estate in farm, upon tender advertised for in the usual mode, at an annual rent not less than the fixed jumma, and for such period as may be deemed expedient, the Proprietor not being entitled to re-enter until the expiration of the said period, and the rent of such farm shall be applied, after payment of the current Revenue, to the liquidation of the arrears due at the time of the lease, the surplus being paid to the defaulter. Provided always that nothing in this Section shall be construed to affect the rule contained in Section 14 Regulation III of 1794 by which if the Lands of a defaulting Proprietor be put up for sale and no person shall offer to purchase them, his person and property of every description shall be liable for the balance to the operation of all the rules in force regarding defaulting Proprietors contained in Regulation XIV of 1793.

Estates of Minors, &c.

X. And it is hereby enacted, that no Estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the

management of the Court of Wards; and no Estate, the sole property of a minor or minors, and descended to him or them by the regular course of inheritance, but of which the Court of Wards has not assumed the management under Regulation VI. 1822, shall be sold for arrears of Revenue accruing subsequently to his or their succession to the same, until the minor or minors, or one of them, shall have attained the full age of 18 years. And no Estate held under attachment by the Revenue Authorities otherwise than by order of a Judicial Authority, shall be liable to sale for arrears accruing whilst it was so held under attachment. And no Estate held under attachment by a Revenue Officer, in pursuance of an Order of a Judicial Authority, shall be liable to sale for the recovery of arrears of Revenue accruing during the period of such attachment until after the end of the year in which such arrears accrued.

Attached by a Revenue Officer.

Ditto by a Court.

Exemption from Sale.

XI. And it is hereby enacted, that it shall be competent to the Sudder Board of Revenue, and to the Local Commissioner of Revenue, to exempt any Estate or portion of an Estate from being notified for sale in the manner prescribed in Section IV of this Act; and in special cases to exempt any Estate or portion of an Estate from sale even after it may have been so notified, at any time before the day of sale, but in that case the order shall specify the reasons for exemption. And in either case arrears on account of an Estate so exempted shall be receivable, any thing in Section IV of this Act to the contrary notwithstanding.

Payments by parties not Defaulters.

XII. And it is hereby enacted, that it shall be obligatory on all Collectors, Deputy Collectors or other Officers as aforesaid, to receive at any time on the last day before the dates of payment fixed as prescribed in Section III any amount of the arrear due from any Estate from any person not being a recorded Proprietor of the said Estate, who may tender the same, and to pass such amount to credit of the Estate for the liquidation of the arrear due on which it may have been tendered, and to grant to the person making such payment, a receipt under his Official signature and seal.

Ditto.

XIII. And it is hereby enacted, that a receipt so granted shall be received in all Courts of Justice as evidence of payment of arrears in the manner described in the preceding Section; and in the event of the holder of such receipt substantiating in any such Court a lien by way of mortgage or otherwise upon the Estate on account of which such payment was made, the amount acknowledged in such receipt shall be held by the said Court to be an addition to the principal sum of such lien, as if it had originally formed part of the same, and shall bear interest from the date of payment as aforesaid, at the rate borne by the principal sum.

Ditto.

XIV. And it is hereby enacted, that a receipt as aforesaid shall be held by all Courts of Justice to be a full and complete acquittance *pro tanto* of rent which may be due from the same to the Proprietor or Proprietors of the Estate, to the credit of which payment of arrears may have been made in the manner described in Section XII of this Act, on account of Lands situated within such Estate.

Deposit on Purchase.

XV. And it is hereby enacted, that the party who shall be declared the purchaser of an Estate by any such public sale as aforesaid, shall be required to deposit immediately, either in Cash, Bank of Bengal Notes or Post Bills, or Government Securities duly endorsed, 25 per cent. on the amount of his bid, and in default of such deposit the Estate shall, forthwith, be put up again and sold.

Balance of Purchase Money.

XVI. And it is hereby enacted, that the full amount of purchase money shall be made good by the purchaser before noon of the fifteenth day from that on which the sale of the Estate bought by him took place, reckoning that day as one of the fifteen, or on the sixteenth day, if the fifteenth day be Sunday or other close holiday; and in default of payment within the prescribed period as aforesaid, the sale shall be null and void, the deposit shall be forfeited to Government, the Estate shall be resold, and the defaulting purchaser shall forfeit all claim to the Estate, or to any part of the sum for which it may subsequently be sold; and in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him

by any of the processes authorized for realizing an arrear of the Government Revenue, and it shall be so levied and credited to the defaulting Proprietor of the Estate sold.

Re-sales.

XVII. And it is hereby enacted, that re-sales rendered necessary by default of purchasers as above, shall be held on same day not being less than fifteen days from the date of such default, to be fixed by the Collector, Deputy Collector or other Officer as aforesaid, and notified in the manner prescribed by Section IV of this Act, and the Estate shall be sold for the recovery of the arrear actually due on the day of the original sale, under the same rules with regard to the payment of the deposit, and of the full purchase money, as are hereinbefore prescribed.

Second Default.

XVIII. And it is hereby enacted, that in the event of a second default, the Collector, Deputy Collector or other Officer as aforesaid shall proceed a second time in the manner prescribed in Section XVII of this Act, and so likewise, as often as need be, until the Estate be sold :—Provided always, that it shall be competent to the Collector to abandon the re-sale, and to proceed anew to sale, at the next periodical sale, for all the balances then due, recalling the proclamation directed to be issued by Section XVII of this Act, immediately on determining on such abandonment.

Purchase by Revenue Officer.

XIX. And it is hereby enacted, that if the Collector, Deputy Collector or other Officer as aforesaid, conducting the sale, either at the time of concluding the sale or at any subsequent time before the sale may have become final see reason to believe that the real purchaser is a person on his Establishment, or in any way connected as being a servant or nominee of Government with the management of the Collections of the Zillah or Pergunnah within which the lot sold may be situated, he shall nevertheless, (if the question be raised before the conclusion of the sale) knock the lot down, and in all such cases it shall be his duty to institute an immediate investigation in order to bring the matter to proof, and the result of the proceedings that may be so held shall be submitted to the Commissioner, who will after investigation either dismiss the case if he consider it not proved, or if it be proved submit it for the orders of the Sudder Board of Revenue, who will if it shall appear expedient direct the lot to be escheated to Government, and whose order shall be final. The amount of the purchase money shall in that case be credited to the defaulter in the same manner as if the sale stood good.

Ditto.

XX. And it is hereby enacted, that if after a sale has become final it shall be proved by a suit decreed in Court that the Estate has been illegally purchased by a Revenue Officer of Government (whether the suit shall have been instituted by the Collector on the part of Government or by the former owner of the Estate sold, or by any other party having an interest in the Estate) in case there be no appeal lodged from the decree the Court passing the decree, or if there be appeal, the Court passing the final judgment shall forward the decree to the Governor General in Council, who shall be competent to order that the Estate be confiscated, and restored to its original Proprietor.

Rents stopped after notice for Sale.

XXI. And it is hereby enacted, that whenever an Estate is notified for absolute sale as provided by Section IV of this Act, the Collector, Deputy Collector, or other Officer as aforesaid, shall affix a proclamation in the language of the District in his Cutcherry, and as soon thereafter as may be in the Cutcherries of the Moonsiffs and of the Darogahs of Police, within whose jurisdiction or jurisdictions any part of such Estate may be situated, and also at the Cutcherry of the Malgoozar of such Estate, or on some conspicuous place on such Estate, forbidding the ryots and under-tenants of such Estate to pay rent to the defaulting Proprietors from the date of such notification to the date of the subsequent notice hereinafter prescribed by Section XXX of this Act, on pain of not being entitled to credit in their accounts with the purchaser for any sums paid within the period aforesaid.

Appeal.

XXII. And it is hereby enacted, that no appeal against a sale under this Act shall be received by the Revenue Authorities, which is not presented to the Collector or other Officer as aforesaid, to be forwarded to the Commissioner, within ten days from the day of sale, or which is not preferred to the Commissioner directly within fifteen days from the said date.

Sale annullable if illegally made.

XXIII. And it is hereby enacted, that the Commissioner of Revenue shall be competent to annul any sale of an Estate made under this Act which shall appear on appeal not to have been conducted according to the Provisions of this Act: and the order of the Commissioner annulling a sale shall be final.

Claims to abatement and set off.

XXIV And it is hereby enacted, that no claim to abatement or remission of Revenue unless the same shall have been allowed by the authority of Government, nor any private demand or cause of action whatever held or supposed to be held by any defaulter against Government shall bar a sale, nor render a sale under this Act illegal.

Deposite.

XXV. And it is hereby enacted, that no claim on account of a deposit in the Treasury of the Collectorate at which the sale is held shall bar a sale, nor render a sale under this Act illegal, unless the party objecting to such sale prove that application was made in due form, and to the proper authority for the transfer of such deposit to the credit of the Estate sold by the party entitled to require such transfer to be made, fifteen days at least before the date fixed in the manner prescribed in Section III of this Act, if the Estate be in a permanently settled District of Bengal, Behar, or Orissa, or otherwise at any time before the date fixed in the manner prescribed in Section V of this Act.

Legal Sale not annullable.

XXVI. And it is hereby enacted, that no sale for the recovery of arrears of Revenue shall be annulled by any Revenue Authority subordinate to Government, except upon proof of the sale having taken place contrary to the Provisions of this Act. Provided always that nothing in this Act shall be construed to debar any person considering himself to be wronged by any act or circumstance connected with any such sale from seeking his remedy by an action for damages in the Dewanny Adawlut against the public officer by whose act or by whose laches he considers himself aggrieved.

Damages.

Government may restore Estate.

XXVII. And it is hereby enacted, that it shall be competent to the Local Government, on representation from the Sudder Board of Revenue or otherwise, in cases of excessive hardship or injustice, at any time within one year from the completion of a sale made under this Act, to annul the sale, and to cause the Estate to be restored to the Proprietor on such conditions as may appear equitable and proper.

Sale final.

XXVIII. And it is hereby enacted, that except in the case provided for by Section XXVII, all sales of Estates confirmed on appeal by the Commissioner shall if the purchase money have been paid up as prescribed by Section XVI of this Act, be final and conclusive from the date of such confirmation

Ditto.

XXIX. And it is hereby enacted, that except in the case provided for by Section XXVII, all sales of which the purchase money has been paid up as prescribed in Section XVI of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the thirtieth day from the day of sale, reckoning the said day of sale as the first of the said thirty days.

Registry.

XXX. And it is hereby enacted, that immediately upon a sale becoming final and conclusive, the Collector or other Officer as aforesaid shall register the name of the purchaser as Proprietor of the Estate sold, without any charge for the same, shall notify such transfer by written proclamation in his own Cutcherry, and in those of the Moonsiff and Darogah of the jurisdictions within which any part of the Estate sold shall be situated, and shall apply the purchase money to the liquidation of the arrear due upon the day of sale, or upon the day of the original sale, if the sale finally consummated be a re-sale, holding the residue, if any, in deposit on account of the late recorded Proprietor or Proprietors of the Estate sold, to be paid to their receipt on demand in the manner following; to wit, in shares proportioned to their recorded interest in the Estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of Proprietors upon their joint receipt.

Notice of annulment.

XXXI. And it is hereby enacted, that the annulment of a sale by a Commissioner shall be publicly notified by the Collector or other Officer as aforesaid in the same manner as the becoming final and conclusive of sales is required to the notified by Section XXX of this Act; and the amount of deposit and balance of purchase money shall be forthwith returned to the

purchaser, with interest thereon at 5 per cent. from the dates on which they were respectively paid in, to the date on which the refund is actually made.

Purchaser liable for Mesne Revenue.

XXXII. And it is hereby enacted, that the party recorded as the Proprietor of an Estate by purchase at public sale for the recovery of arrears of Revenue shall be answerable for all instalements of the Revenue of Government which may fall due subsequently to the day of sale; provided, however, that in sales of the nature specified in Sections XVII and XVIII of this Act, the purchaser shall be answerable for all instalments of Revenue which fell due subsequently to the date on which the Estate was originally advertised for sale.

Contesting legality.

XXXIII. And it is hereby enacted, that no person shall be entitled to contest the legality of a sale after having received any portion of the purchase money; and that no part of the surplus proceeds of the sale of an Estate, shall be liable for the private debts of the late Proprietor, whilst a suit to set aside such sale as illegal is pending in any Court of Justice.

Reversals.

XXXIV. And it is hereby enacted, that in the event of any sale being reversed by a final decree of any Court of Justice, the purchase money shall be refunded to the purchaser by Government, together with interest at the rate of five per cent. per annum. But if an arrear was due upon the Estate on the date of notification for sale, the Estate shall be held under attachment by the Collector, and shall not be restored to the Proprietor until that arrear is paid.

Giving Possession.

XXXV. And it is hereby enacted, that in the event of further measures than those specified in Section XXX of this Act being found necessary for the purpose of putting the purchaser in possession, the Collector or other Officer as aforesaid shall put the purchaser in possession in conformity to this Act, and the Collector or other Officer as aforesaid shall possess and exercise to that end all the powers possessed and exercised by Courts of Justice for giving possession of Landed Property under decrees of Court.

Enhancement of Rents in Bengal, &c.

XXXVI. And it is hereby enacted, that the purchaser of an Estate sold under this Act, for the recovery of arrears due from itself, in the permanently settled Districts of Bengal, Behar, and Orissa, shall be entitled to enhance, in the manner prescribed in the Regulations, the rent of all under-tenures in the said Estate, with the following exceptions:

First. Tenures which were held as Istemrarree or Mocurrerree, at a fixed rent, more than 12 years before the permanent settlement.

Secondly. Tenures existing at the time of the Decennial Settlement, which have not been, or may not be, proved to be liable to increase of assessment, on the grounds stated in Section LI Regulation VIII of 1793.

Thirdly. Lands held by Khood Kasht or Kudeemee Ryots, having rights of occupancy at fixed rates.

Fourthly. Lands held under bonâ fide leases temporary or perpetual, for the erection of dwelling houses, or manufactories, and being so used, or for gardens, tanks, canals, or like purposes.

Fifthly. Farms granted in good faith by a former Proprietor, for terms not exceeding twenty years, under written and duly registered leases, stipulating for the payment of an annual rent not less than the average net rent realized from Lands of the same description in the vicinity during the three years immediately preceding the year in which the lease as aforesaid was granted.

Provided that nothing in this Section contained shall be held to authorise any such purchaser to enhance the rent of any Talookdar, Ryot, or Cultivator, beyond what the late Proprietor would have been entitled to demand from the same, according to the established usages and rates of the Pergunnah or District, if no engagement had existed between them.

Onus probandi.

XXXVII. And it is hereby enacted, that in the event of any purchaser at public sale as aforesaid proceeding against any tenant claiming to belong to one of the abovementioned classes, on the plea that the tenant does not really so belong, the burthen of proof that he does belong to an exempted class shall be on the tenant sued.

Under Tenures elsewhere.

XXXVIII. And it is hereby enacted, that the purchaser of an Estate sold under this Act for the recovery of arrears due from itself, in Districts other than those mentioned in the last preceding Section, shall be competent to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with *ryots* or the like settled or credited by the first engager or his representatives, subsequently to the settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except *bonâ fide* leases of ground for the erection of dwelling houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water courses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing in this Act contained shall be construed to entitle any purchaser of Land at a public sale to disturb the possession of any village *Zemindar*, *Putteedar*, *Mofussil Talookdar*, or other person having a hereditary transferable property in the land, or in the rents thereof, not being one of the Proprietors party to the engagement of settlement or his representative; nor to eject a *Khoodkhast*, *Kudeemee ryot*, or resident and hereditary cultivator, having a prescriptive right of occupancy. Nor to demand a higher rate of rent from an under-tenant of either of the above descriptions, than was receivable by the former *Malgoozar*, saving and except in cases in which such under-tenants may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the Land, in consequence of abatements having been granted by the former *Malgoozars* from the old established rates by special favour, or for a consideration, or the like, or in cases in which it may be proved that according to the custom of the *Pergunnah*, *Mouzah*, or other local division, such under-tenants are liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government.

Claims to be tried by Courts.

XXXIX. And it is hereby enacted, that the claims of purchasers, whether in regard to the enhancement of rent, or ejectment from tenure, under the provisions of Sections XXXVI and XXXVIII of this Act, shall be adjudicated only by the Civil Courts. Provided that nothing in this Section contained shall prevent purchasers from sueing their under-tenants for arrears of rent by summary suit in the usual manner.

Purchase by a Defaulter.

XL. And it is hereby enacted, that none of the powers and privileges conferred upon purchasers at public sales for arrears of Revenue by Section XXXVI or XXXVIII of this Act, shall be enjoyed or exercised by any person purchasing in his own name, or in the name of another, an Estate of which he was a recorded or unrecorded Proprietor, either absolute or in coparceny, at the time of sale for arrears as aforesaid, and such a purchaser shall have no right that was not possessed by the defaulter at the time of sale.

Arrears of Rent.

XLI. And it is hereby enacted, that arrears of rent which at the dates of sale may be due to the defaulter from his tenants, shall be recoverable by him by suit in Court in the prescribed form.

Record of Proprietor (Benamee.)

XLII. And it is hereby enacted, that the name delivered in to the Collector or other officer as aforesaid by the party to whom an Estate shall be sold under this Act, shall be recorded as the name of the Proprietor of such Estate, and any suit to oust him on the ground of fictitious purchase shall be dismissed with costs by any Court of Justice in which it may be instituted.

Contempt.

XLIII. And it is hereby enacted, that any covenanted officer employed in the collection of Land Revenue, or in the Superintendence thereof, shall be competent to punish any contempt committed in his presence in open Cutcherry, or office for the time being, by fine, to an extent not exceeding Co's. Rs. 200, commutable if not paid to im-

prisonment in the Civil Jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Revenue Officer as aforesaid shall carry his sentence into effect. Provided that an appeal from any order passed under this Section shall lie to the superior Revenue Authorities in the usual course.

Default.

XLIV. And it is hereby enacted, that a default to make good a bid by making the deposit required by Section XV of this Act shall be held to be contempt.

Rights conveyed by Sale.

XLV. And it is hereby declared and provided, that when the Estate of a defaulter or his surety may be sold for the recovery of an arrear of Revenue, not being the Estate on account of which the arrear accrued, then whether the said Estate consist of *Mulgoazaree* or *Lakheraj* land, the purchaser only acquires the rights, interests, and title possessed by the said defaulter or surety, in like manner as if the land had been sold by private sale or under a decree of Court in liquidation of a private debt. But when an Estate is sold for the recovery of any part of the Revenue assessed upon it, the act of sale transfers to the purchaser all the property and privileges which the engaging party possessed and exercised at the time of settlement, free from any accidents or incumbrances that may subsequently have been imposed, or have supervened thereupon, such as sale, gift, or other transfer, mortgage, marriage settlement, or other assignment, or the like, and the property and privileges possessed and exercised as aforesaid, being perpetually hypothecated to Government, for the Revenue assessed on the Land, no claim of right founded on any act of the original engager or his representative, or on any plea impeaching the title by which the said engager may have held, shall be allowed to impugn the right of the Revenue Authorities to make the sale, or to bar or affect the title and interest conveyed to the purchaser by the sale. Provided however, that if Government shall have acquired or assumed the property of any Estate subsequently to a settlement, and shall have conveyed the same to another, the Estate shall be held subject to all just claims to which it was liable at the time of such conveyance; and the party ousted on the assumption or acquisition by Government, shall not be barred by a sale made after such conveyance of any right he may have possessed to recover from Government the property so assumed or acquired by it.

Claimants.

XLVI. And it is hereby enacted, that when any person claiming the proprietary right in any *Mohaul* shall have instituted a suit in Court for the recovery of the same, if the party in possession of such *Mohaul* shall neglect to discharge the Revenue payable on account thereof, and a sale of the *Mohaul* for the recovery of the arrears due shall have been advertised as aforesaid, it shall be competent to the said plaintiff to make application to the Court to be put in possession of the contested *Mohaul*, on paying the arrears with interest and charges due, and giving security as hereinafter provided. And the Judge on receiving such application shall, subject to the rules for taking security in the case of appellants and defendants contained in Clause Fourth Section XI Reg. XIII 1808, direct the Collector, Deputy Collector or other Officer as aforesaid, on receiving from the said plaintiff the amount of arrear due, and of charges, to put the said plaintiff in possession.

Extension of Law.

XLVII. And it is hereby provided, that the operation of this Act shall be confined to the Provinces of Bengal, Behar, Orissa, and Benares, and to the Ceded and Conquered Provinces under the Government of the Presidencies of Fort William in Bengal, and nothing in this Act contained shall affect Land in the town of Calcutta or the Settlements of Singapore, Penang or Malacca.

Ordered, that the Draft now read be published for general information.

Ordered, that the said Draft be re-considered at the first Meeting of the Legislative Council of India, after the 14th day of January, 1840.

J. P. GRANT

Offg. Secy. to the Govt. of India.

(5)

BENGAL SECRETARIAT LIBRARY

To F. J. Halliday, Esquire,

Secretary to the Government of Bengal.

Sir,

Legislative Department.

With reference to your letter of the 10th of July 1838, I am directed by the Hon'ble the President in Council to request that you will lay before the Hon'ble the Deputy Governor of Bengal, with a view to their being forwarded for the observations of the Sudder Board of Revenue, the accompanying papers connected with the Draft of a proposed new Sale Law for the Presidency of Fort William, read in Council for the first time on the 14th of October last, and published for general information.

2. The President in Council has received several communications relative to the proposed Law. One from the Landholders' Society in the Official letter of their Secretaries dated the 1st Instant, others from individual Officers of experience, submitted in a demi-official form. The substance of all these papers will be found digested and explained in the accompanying Table, arranged according to the Section of the Act to which the several comments apply. On each of these the President in Council has recorded his remarks, which are not intended as final decisions on any point, but as suggestions and arguments thrown out for discussion by the Sudder Boards, and such subordinate Revenue Authorities as they may please to consult, and by the local Governments, whereby the final decision of the Legislative Council on each point raised will be facilitated.

3. Matters of detail being fully treated of in the Table alluded to, I am directed in this letter merely to attract attention to the more prominent questions connected with the proposed Law, wherein principles of great importance are involved.

4. The present Regulations* prescribe that a consolidated charge of penalty and interest shall be made against all permanently settled Estates in arrear, at the rate of 25 per cent. per annum on the arrear. The penalty having been abandoned by the Government Orders cited in the margin† except when the arrear is believed to be wilful or fraudulent, the charge now actually made is for interest alone, at the rate of 12 per cent. per annum; so that the orders for regulating the present practice are conformable to the Law as it stood between the passing of Regulation I. of 1801 and Regulation V. of 1812, and between the passing of Regulation XII. of 1824 and Regulation VII. of 1830. The Sudder Board of Revenue at Calcutta recommended that this charge should be modified by allowing the Government, without restriction, to fix periodically the rate of interest to be charged. The President in Council proposes to abandon all charge of interest‡ as well as penalty§. The following are the reasons which have weighed with the Government of India in forming this Resolution.

Penalty and Interest.

* Sec. 8, Reg. VII. [illegible]

† Secretary [illegible] ment to Sudder B[illegible] Revenue, 10th Nov[illegible] ra, 14.

‡ See Cl. 2, Se[illegible] 8, Reg. V. of 1812.
Cl. 1, Sec. 23 Reg. VII. of 1799.
Sec. 4, Reg. I[illegible] of 17[illegible]
Sec. 7, Reg. XIV. [illegible]
§ See Reg. XII. of 18[illegible] Cl. 1, Sec. 28.
Reg. V. of 1812, Se[illegible] 2 Reg. I. of 1801.

5. It has been found by long experience that the object of the charge, which was regularity in the payment of revenue, (an object not more necessary for the interests of Government than for those of the Zemindars) is not obtainable by a charge or fine for arrears at the rate even of 25 per cent. per annum. The demand of interest therefore is of no use, as regards the object for which it was imposed. On the other hand the ill effects of such a demand are considerable. It is believed to be an excuse with Zemindars for demanding extra payments from their ryots; it tends to the complication of the public accounts, even where they are honestly and regularly kept, and affords a convenient screen for the practice of fraud against Government and the Zemindars where the case is otherwise; it renders it difficult for a Zemindar to know the exact amount of the public demand upon him on a given day; and it adds greatly to the labor of the department of accounts. Under the proposed Law no Estate will be allowed to remain at any time more than a few months in arrears, except in extraordinary cases calling for peculiar indulgence, in which it would not be desirable to enforce the payment of interest under any circumstances. For this purpose a methodical process of enforcing payment, generally, must be adopted; but in order to facilitate the regular payment of revenue by well disposed Zemindars, and thereby to advance the desired object, it seems to His Honor in Council both fair and politic to simplify the account between the Collector and the Zemindar as much as possible. It is believed that the abolition of interest and penalty will simplify the account so much as to obviate the necessity of making any specific demand, or issuing any special notice to individuals on account of current revenue; for every Zemindar must know the amount of his kists.

Notification of Absolute Sale.

6. The most important change of system involved in the proposed Law is the fixing of a day whereon, generally speaking, if all arrears of current revenue be not liquidated, the Estate in arrear must be advertised for sale by auction, and must on the day of sale advertised be inevitably sold to the highest bidder, notwithstanding the tender of full payment in the meanwhile.

* See paras. 33 to 42.

7. As stated in the letter from the Secretary of the Sudder Board of Revenue at Calcutta, dated the 13th of March 1838,* there are two distinct courses. First, to allow "payments on each lot up to the moment of "bidding for or calling up that lot, as at present." Secondly, to fix "a time "previous to the commencement of the sale, after which no payments should on "any account be received." In the Draft Act submitted by the Board, payments were allowed up to sunset of the day preceding that fixed for the commencement of the periodical sale, but not after that moment, except upon payment of a fine. In the Board's letter the Members explained that the two principles were matter of discussion, and that "the plan of adding to the last of the two courses men-"tioned a rule of amercement for later payments was a kind of compromise, "which they have allowed to stand in the Draft, though they are not fully prepared "to contend for its adoption. The real question is still, they are inclined to think, "between the extreme measures of limiting all payments to a fixed time before "the commencement of the periodical sale, on the one hand, and on the other, of

"admitting as is now done all payments up to the moment of the calling up of "each lot."

8. In these sentiments the President in Council entirely concurs. He does not think that "the middle course embodied in the (Board's) Draft meets all "difficulties,"* as elsewhere observed by the majority of the Board. The objections to "the plan of amercement" urged in paragraph 36 of the same letter appear to him insuperable, and His Honor in Council accordingly thinks it must be rejected. But even after getting rid of this plan, the President in Council is of opinion that the system of the Board's Draft would fail, by reason of its not adopting one or the other course so decisively as is necessary to work out the principle on which either plan rests. He thinks that it would be open to all the very plausible objections,† which can be urged against the rigor of the second course above explained, without yielding those substantial advantages which the decided adoption of that course would insure.

* See para. 41.

† See paras. 39 and 40 of Board's letter.

9. The great evil of the first course, as shown by experience actually to exist, is that as sale is the only effectual means for the enforcement of payment, the occurrence of an arrear, and the consequent advertisement of the Estate for sale, are regarded as matters of course. Therefore the monthly sale advertisements, which may include every Estate in a District, are of no real use. Purchasers, except from private knowledge that an individual purchaser may have of the circumstances of some one or more Zemindars of a District, have no previous information of an Estate being about to be sold; in no instance is any knowledge, or even any idea of the probability of a sale occurring, obtained from the sale notifications. Consequently, owing to the want of competition, defaulting Proprietors fail to obtain the full value of their Land. There must, under any system, be a last moment for payment, after which, in default of payment, the Estate must infallibly be sold. So long as the last moment for payment is the moment in which the sale is completed, there can be no certainty, and the Estates of defaulters must be sacrificed at much less than they would realise at a well regulated Auction. The Draft Act proposed by the President in Council may be considered as leaving the last moment for payment where it now is, but postponing the actual sale for a period of between fifteen days and a month; during which interval real publicity will be given to the fact of such and such Estates being for sale, whereby capitalists, even from a distance, will be enabled, after making the necessary enquiries and arrangements, to enter into the competition for the purchase, with the assurance of not having come upon a bootless errand.

10. In this light the new system, *if only it be fully understood by the Zemindars before it comes into operation*, whatever arguments of apparent leniency towards that class may be urged against it, cannot fairly be regarded as any thing but an unqualified benefit conferred upon them.

11. But if the sale day were fixed so close upon the last moment for payment as the day following the close of the day fixed for payment, though the actual

sale would be more orderly and expeditious than at present, still the great advantage to Zemindars arising from real publicity, which induces the President in Council to incline to so great a change of form as that proposed, would be wholly lost, as much as if payment were allowed up to the moment of knocking down the lot.

12. The President in Council will be glad if the particular attention of the Sudder Board be attracted to this point. He feels no doubt as to the soundness of the principle, viewing the question in a general light. Nor does he hesitate to say that its adoption in this Law will be attended with the best effects, provided only that all the Zemindars be made before hand fully to understand it, and thoroughly to be aware that deviation from it will not be allowed. But it is manifest that unless this were the case, the introduction of this plan would be most disastrous. The President in Council therefore begs it to be understood that the enactment of this part of the Law must depend upon his being assured of the possibility of making these provisions thoroughly understood by all the parties interested, before the Law will come into force.

13. In this view he directs me to suggest for consideration, whether the safer course might not be to introduce the Law gradually; first enforcing it in a few Districts, where from the character and general intelligence of the Zemindars, their small number, the Official qualifications of the Collector, and other circumstances, the task of giving the necessary publicity to the change of Law will be comparatively easy, and the risk of bad consequences small.

14. On this point it will be advisable to consult some subordinate Officers best acquainted with their Districts, and individual Zemindars and other natives of understanding and influence. The suggestion made by the Landholders' Society in the fifth para. of their Secretaries' letter of issuing a precautionary notice, is deserving of attention, though it is probable that a more particular intimation must be made to each Zemindar before the Law is first put into operation. The President in Council is glad to find that the Landholders' Society do not seem to anticipate danger from the change proposed, provided adequate precautions are taken by the Revenue Authorities.

Special exemption from Sale.

15. It will be observed that Section 11 allows the Superior Revenue Authorities to exempt an Estate from sale, even after notification, in special cases. The intention of this Rule is to provide only for extraordinary cases, such as the Law cannot anticipate. Care must be taken to prevent the unnecessary use of this power, whereby the good effects of the Law would be entirely lost, by interfering with its most essential attributes of method and certainty. Any suggestions for avoiding this error in practice, without restricting the provision too much to be of use in extreme cases, by issuing subsidiary rules of practice, or by a change in the words of the Law, would be valuable. It seems probable that the provision, to be resorted to strictly as a rare exception, could not safely be altogether omitted, though very probably it may be susceptible of modification with advantage.

16. It will be observed that Section X. follows the present law, in providing that an Estate shall not be sold until the end of the year, for arrears accruing during attachment by order of a Court of Justice. As by Regulation V. of 1827 attachments of Estates by order of a Court of Justice are made by the Collector, the President in Council very much doubts the justice and necessity of allowing the sale of an Estate for arrears of revenue accruing during any attachment. Estates may frequently be attached without any fault on the part of the owner. If after attachment the revenue is not paid, this also may happen without any fault of the owner, but it will seldom happen without some fault on the part of the Collector or his subordinate Officers. It would seem that in the case of an attachment by order of a Court of Justice, the Government obtains all the security for its revenue it can fairly require, by having the entire management of the land made over to its own Officers. And His Honor in Council thinks, that all risk from attachments fraudulently obtained by the proprietors themselves must be obviated, under any tolerable management, by the power which the Collector will possess of retaining the Estate under attachment until it has paid all arrears of revenue. *Judicial attachments.*

17. The President in Council did not make the Draft differ in this point from the present Law, because he wished before doing so to ascertain whether the Revenue Boards had any objections to the change, on the ground of risking the security of the Public Revenue. But at present he is strongly inclined to the opinion that attachment by order of a Court of Justice, executed as it now is, and ought always to be, by the Collector, should be put on the same footing with attachments by order of a Revenue Authority.

18. The effect which a sale for arrears of revenue has on under-tenures created since the Decennial Settlement, or liable at the time of that Settlement to enhancement, is a matter of extreme importance. The question is ably discussed, and the history and present state of the Law on this point are clearly explained in paras. 95 to 129 of the Calcutta Board's letter. *Under-tenures.*

19. The President in Council feels it unnecessary to consider whether it was by oversight or intentionally that holders of Talooks created since the Decennial Settlement were, by Regulation XI. of 1822, rendered liable to ejectment, as well as to a regulated enhancement of rent by a sale.* He is clearly of opinion that enhancement of rent is the only power necessary to be given to auction purchasers in such cases, and he has therefore retained the provisions of the Draft prepared by the Board, in this respect, for the permanently Settled Provinces. *New Talooks.*

* See para. 112.

20. The President in Council has adopted in the Draft Act the proposal made in your letter under reply for saving *bona fide* leases to farmers, for terms not exceeding 20 years, and at adequate rents, from being affected by an auction sale. This provision, His Honor in Council is convinced, will be another very great improvement on the present Law. *Farms.*

Principle of the hypothec discussed.

21. But His Honor in Council would wish the Revenue Authorities to give their best attention to the principle whereby auction purchasers acquire rights over certain *bona fide* under-tenures, greater than those vested in the late defaulting Proprietors; with the view of determining whether the practical enforcement of that principle is not susceptible of still further restrictions, without danger to the security of the Public Revenue, as insured by the perpetual hypothec of the land itself.

22. There is no question, His Honor in Council observes, but that the enhancement of the rent of under-holdings, created perhaps forty or fifty years back, and held for all that time in good faith, without fault on the part of the holder, merely because of the fault of his superior, which he has no means either to prevent or remedy, is a severe hardship to the individual, and must operate injuriously on the interests of agriculture generally by the uncertainty which it creates. This evil therefore, obviously, ought to be lessened as much as possible, and on no account to be extended beyond the necessity of the case. It is impossible to allow, without restriction, tenures made after settlement to be valid, as against Government, because thereby the revenue would be in constant jeopardy. In point of fact, the Zemindar's whole Estate being originally liable for the revenue assessed upon it, any tenure created by him after settlement at a rent inadequate to afford its share of that revenue, is, so far as Government is concerned, essentially fraudulent and void *ab initio*. There is no hardship, therefore, nor injustice, in voiding that tenure *to the extent required for the security of Government*, whenever the revenue of Government fails: and the right to do so can never, under any system, be abandoned by the State. But the necessity of voiding the tenure *in toto*, (and the right to enhance according to the present value of the land differs not in principle from absolute annulment) is not so apparent. So far as the Zemindar sells or gives away to an under-holder any part of his *profit* from the land included in the tenure, or his right to profit from its future improvement, the transaction is essentially good, and it affects the rights of no third parties. So also there seems to be no absolute necessity for Government to interfere with any transaction between the Zemindar and an under-tenant, when the Zemindar falls into arrears, unless *in consequence of that transaction* the arrears would be lost, and the future revenue would be risked, by reason of the Zemindar's rights becoming unsaleable. It is manifest that to abstain from such interference is no more than justice to the under-tenant, and no less than justice to the superior, who has himself already made over his interest, or part of it, to another. It must be presumed, that under the present Law, any loss to an under-tenant who had given a valuable consideration for his tenure, arising from the sale of the Zemindaree owing to the default of the Zemindar, is recoverable by the under-tenant from the defaulting Zemindar by a civil suit: for the Zemindar has sold the same thing twice, once to the under-tenant and again to the auction purchaser. But it would be better to prevent, if possible, the necessity of such a suit, and to provide against the risk of the Zemindar's insolvency attending it.

A scheme suggested.

23. Mr. Halliday has suggested a scheme whereby all *bona fide* under-tenures of whatsoever description shall be maintained at an auction sale, in the same manner

as at a private sale; but if the Zemindaree, under such circumstances, be not purchased, then all the rights of the defaulting Zemindar shall lapse to Government, who shall enter in his place with a right to levy the revenue directly from the land after a re-settlement of all the under-tenures now liable to annulment or enhancement of rent by an auction purchaser.

24. No strong objection to such a scheme, on the ground of risk to the Public Revenue, at present occurs to His Honor in Council; for so long as the Zemindaree is saleable, so long must the revenue be secure.

25. Such a change of Law would be no hardship on the Zemindar. A Zemindar in arrear has a right to claim that his Estate be offered for sale, in order that he may obtain its value after payment of what is due from it. But when his Estate is found to be unsaleable, it is apparent that he and his ancestors have already divested themselves of the whole of their interest, which consisted only of the Zemindaree *profit*. The re-entry of Government into the management of the collection of the revenue assessed in the land is then natural; and practically it is nothing more, as it affects the Zemindar, than the present custom of purchasing on account of Government for one rupee. It is clear that as between the Zemindar and Government, an Estate is unsaleable when it will not realise a sum equal to the arrears for which it is put up for sale.

26. It is apparent that such a change of Law would be an unqualified benefit conferred upon the holders of under-tenures liable at present to enhancement of rent, or to annulment, by an auction purchaser.

27. Fully to carry out the principle explained in paragraph 22, it would seem to His Honor in Council necessary to add provisions against the re-settlement of any Talooks which existed at the time of the existing assessment of revenue, at a rent higher than was paid by such Talooks at the time of that assessment: and against the enhancement of the rent of any *bona fide* tenure, whether permanent or temporary, when the rate of rent before paid thereon to the Zemindar is not inadequate to afford the due proportion of the Jumma assessed upon the Estate.

28. The President in Council would be glad if the Revenue Authorities were to consider this matter with attention, and report what they think of the proposal, particularly what difficulties, if any, they anticipate as likely to occur in the way of the practical working of a scheme of this nature, and to what extent they think the principle can be acted upon with safety.

29. His Honor will observe, with reference to the 2d, 3d, and 4th paras. of your letter under reply, that the Draft Act would take away all power to reverse a sale, on other than legal grounds, from all Revenue Authorities subordinate to Government. *Reversal of Sales.*

30. It has been suggested that it would be a great advantage to Landholders, in certain cases, if interest were to be allowed on revenue paid in *Payment in advance.*

advance, the rate of such interest should of course be the current rate of the day. The same object would be accomplished if the Collector, or the Sub-Terasuer at the Presidency, were authorised to receive in deposit Government Paper, duly endorsed, which he might be authorised to sell in the event of arrears of revenue occurring. The advantage would be considerable in the case of a Landholder being obliged to go to a distance, perhaps to England, leaving his Estate in charge of an Agent, by whose neglect or fraud it might be sold in his absence under very disadvantageous circumstances. Such a rule might obviate much of the risk to which the system of periodical sales now exposes Landholders, more especially Europeans. It would be necessary probably to restrict any rule of this sort to payments in advance for one or two years; otherwise the effect might be to allow the Redemption of the Land Tax, which is not contemplated. His Honor in Council would be glad to hear the opinions of the Deputy Governor and the Sudder Board on this suggestion.

Remarks of Landholders' Society.

31. The Revenue Authorities will doubtless give full consideration to the observations made by the Landholders' Society on the proposed Draft Act. With few exceptions, it will be seen that the objections urged by that body to parts of the Draft are in fact objections to the existing Law, which the Draft Act has not proposed to change. But this circumstance will enable the Revenue Authorities to test the value of those objections by a reference to long experience. His Honor in Council does not think it desirable to innovate unnecessarily; but these suggestions for improving the existing Law of Sales, emanating from a body comprising many respectable members of one of the classes chiefly affected by that law, are worthy of full consideration.

I have the honor to be,

Sir,

Your most obedient Servant,

J. P. GRANT,

Offg. Secy. to the Govt. of India.

COUNCIL CHAMBER,
The 14 February, 1840.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
SECTION I.	
Mr. BROWN.	
The words "under certain restrictions," should be introduced after the words "to provide for the absolute sale" in Section I. of the Act published, with reference to the exemption provided in Section XI.	A verbal amendment to this effect seems proper. The words "to provide generally for the absolute sale" might be used.
SECTION II.	
Mr. BROWN.	
This Section is altered in the *New* Draft that I have prepared, so as to be *positive* as well as *negative*; and another Section is inserted before it specifying what Officers shall be empowered to hold sales.	Mr. Brown's new Draft accompanies these papers.
Mr. HALLIDAY.	
Seeing that Zemindars have no longer to *pay* interest, might they not properly enough be debarred from exacting it from their tenants?	The Boards can report upon the propriety of such a provision.
SECTION III.	
LANDHOLDERS' SOCIETY.	
Discretionary power is given to the Sudder Board to fix a period for the payment of Revenue in each District. This has no doubt been done, to enable the Board to exercise a wholesome discretion, in fixing the period of public demand with reference to a due consideration of the seasons of the year, and other local circumstances in each District, so as to provide for the general convenience.	See paragraphs 6 to 14 of the accompanying letter.
But, adverting to the indulgence that has been allowed to the proprietors of the Settled Provinces, for a period of nearly fifty years, of paying in the Revenue, not only on the day preceding the sale, but even at the very time of putting up the Estate to Auction, and with reference to the dilatory habits of landed proprietors generally, the Society beg leave to observe that the change, contemplated in this Section, appears to be rather sudden, and on its first introduction, may deprive many persons of their property, if some further provision be not made to impress on the defaulters every time their Estates are in arrear, that their Zemeendary will be absolutely sold if the balance be not paid within a certain day. With this view, the Society beg to propose that a precautionary notice of fifteen days, prior to the day fixed by the Sudder Board for closing the receipt of payment, be re-published in the *Calcutta Gazette*, the Collector's, the Judge's, and the local Moonsiff's Cutcherries. This provision, without	

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
in any way interfering with the object of the law, will in a great measure prevent sales, which would otherwise have taken place merely for want of due vigilance on the part of the landholders.	
Mr. HALLIDAY.	
"Absolutely be sold to the highest bidder"—yet bid might be 10 Rupees and balance 10,000—with reference then to this contingency and to alterations hereinafter suggested—say after "bidder" insert "beyond the amount of the balance (or arrear) due?"	This amendment may be considered in connexion with Section IX. Under the the present system the Estate is sold to the highest bidder, but the Government is a bidder up to the amount of the arrear due. As there will be cases in which the arrear is recoverable from the other property of a defaulter the *power* to sell for less than the arrear must be retained.
Mr. MILLS.	
The novelty of this Enactment will at first cause the ruin of many Zemeendars, but it is high time that we should break through what the *Friend of India* calls the natural propensity, "procrastination."	The Government must be assured that this will not be the case, or the law must be modified.
[He deprecates the absolute sale of an Estate to the highest bidder, because it will entail many an act of injustice, and strongly urges that the saving clause proposed by Mr. Halliday be inserted after bidder "beyond the amount of the balance or arrears due?"]	See the last observation but one.
Mr. BROWN.	
Words in Section 3 of Act published. "Shall determine upon "what dates all arrears "of current (3) Revenue "shall be paid up." — 3. The word "current" appears superfluous, and may lead to misconstruction, seeing that *all* arrears are required to be discharged on the dates to be specified. In the *new* Draft (Section IV.) I have substituted the words "the several instalments of the public revenue with all arrears thereof."	This is a mistake, see Section VI. The intention is to require a previous demand or a specific notice for all arrears on account of past years and for miscellaneous demands of Revenue or *quasi* Revenue. It is thought that such a notice cannot fairly be dispensed with except for current Revenue, whereof the demand is certain and constant.
"In default of which "payment the Estates in "arrear in those Districts, "except as hereinafter "provided, shall absolutely "be sold at public auction "to the highest bidders." — As this is more particularly set forth and explained in a subsequent Section, its insertion in this place appears superfluous and puzzling, and I therefore think it had better be omitted here.	These verbal amendments should be taken into consideration by the Boards.
"In the language (4) of "that District." — 4. Some Districts (Bhaugulpoor for instance,) have more than one language; it would therefore be better to say "the language commonly understood."	

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
"Or other officer duly "authorized (5) to hold "sales under this Act." — 5. It is no where stated that the Collector, Deputy Collector, or any other Officer *is* empowered to hold sales under this Act; I have therefore introduced a Section (No. II.) to this effect in my proposed *new* Draft.	These verbal amendments should be taken into consideration by the Boards.
"Such advertisements "and notifications (6) to "be issued, on every occasion after the first above "(7) provided for." — 6. The expressions used here appear complicated; instead of them it would be better, I think as being more easily understood to say, "and the dates so fixed shall not be changed, except by order "of the said Board, promulgated in the "manner above described, and notified in "the *Calcutta Gazette* one full month "before the commencement of the year in "which the new date or dates are to take "effect."	
7. The words "after the first" are unnecessary, if (as proposed), the Act is to take effect from the 1st of May next.	
SECTION IV.	
Mr. HALLIDAY.	
Considering the enormous "publication" required, the term is altogether too small. I would strike out "and in the Malgoozaree Cutcherry of each Estate advertised or in some conspicuous place thereon," for reasons which I shall be ready to assign to any body asking for them. The thing was tried from 1822 (at least, I have not time to look back further,) down to 1830 and *failed*. In 1830 it was abandoned without any harm done. The law will be better without it, but if it is to stand the *term* of a month must be extended, a fortiori, that of fifteen days.	Considering the effect which a sale has upon under-tenants, mortgagees, and numerous third parties, the President in Council does not feel quite prepared to diminish the circle of publication.*
Mr. MILLS.	
Where is the necessity for publishing the notices in so many different places, it is surely sufficient to publish them in Cutcherries of the Collector and Judge. I have always found Clause 2, Section 7, Regulation XI. of 1822 work well, and I would propose the present practice be maintained, viz. that if the notice prescribed by Clause 2, Section 7, Regulation XI of 1822 be promulgated in the Mofussil twenty days prior to the sale, the sale as far as the advertisements are concerned, shall be legal. Fifteen days is too limited a period for the Collector to adjust his accounts, and issue the numerous advertisements; in a large district it will not be practicable for the Collector to fix the day of sale within one month from the date specified in Section 3 of the Act.	In anticipating the time and labor required for such publication, this material circumstance has probably been overlooked; viz. that under this Act *only such Estates as will actually be sold* will be entered in these notices. These notifications moreover will only specify the name of the Estate and the day of sale, they will therefore differ entirely from the present sale notifications. The average number of sales yearly *concluded* in each District, which can readily be ascertained, is not large, and there seems no reason to anticipate that the number of notifications under this law would exceed that average. The accounts ought to be adjusted *before* the date of payment.

Suggestions on the Draft Sale Act.

Observations by the President in Council.

Mr. BROWN.

Words in Section IV. of Act published.
(8) "And it is hereby "enacted."

8. The provisions of Section 12 should be introduced in this place, as has been done by me in Section 4 of the *new* Draft, so as to make the *process* preparatory to sale read straight forward.

This amendment is connected with Mr. Brown's proposed new arrangement. On the question of arrangement the President in Council remarks, that the Draft Act is doubtless susceptible of much improvement in its arrangement. But it will be better to discuss all questions of substance in the order of the Draft as it now stands, treating the question of arrangement distinctly.

10. The words "with the Sudder Jumma and the nature and amount of the arrear due" should be here inserted.

This addition, so far at least as the specification of the arrear, appears to His Honor in Council unnecessary; and if so it is objectionable.

"Will be absolutely sold "as aforesaid (10) and the "day on which the sale of "the same will commence "which day shall (11) not "be more than one month."

11. The words "in ordinary cases" should be inserted here, for two reasons; 1st, because in cases provided for below in Section 6, it will be impossible sometimes to conform to this rule; and 2dly, because in some Districts (Tirhoot for instance) where from 2 to 3000 are advertized for sale at a time, it will be next to impossible to prepare the *six* copies of so voluminous a document, which by this Act are required, within so limited a period.

This addition should be taken into consideration. It might be useful in special cases, or when the property is very large, for the sake of purchasers, however, not for that of the Collector. Instead of 2000 or 3000 Estates advertised at once, as at present, it is hoped, as those advertised must be sold, that there will seldom be more than three or four. The notification will not be at all voluminous, containing only the name and date.

SECTION V.

Mr. MILLS.

It will be necessary to repeal Clause 4, Section 5, Regulation X. of 1818. This law has worked well; very few Estates have been sold since it passed, and I see no sufficient reason for altering it. When other means fail of securing the realization of the Revenue, the Collector at once advertizes the Estate for sale, reporting the same for the sanction of the Commissioner. If the sale be made absolute, few Zemeendars in the Cuttack Province will be able to save their Estates. The sale of temporarily settled Estates should be especially avoided, and as regards Cuttack I strongly recommend that this Section to be left out, and the old law Regulation X of 1818, maintained.

The Regulation cited will remain in full force. This Section it will be seen applies only "in "Districts not permanently settled, and in the "Province of Benares," and does *not* require the absolute sale of Estates therein in default of payment. All intermediate processes, including the special sanction of the Board, will still be enforced *before* advertising for sale. This Act only provides that *when a sale has been finally resolved on*, after advertisement, the sale shall be absolute, in order to obtain a better price for the defaulter. It will still rest with the Revenue Authorities whether to resort to sale or not.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
SECTION VI.	
MR. HALLIDAY.	
Similar alterations required here—the words "or part of it" seem ambiguous, I do not understand them—suppose an Estate A. B. C. of which the portion D. is situated in Thannah Gopeegunge, and the rest in another Thannah or Thannahs, would it suffice that the notice should be served or affixed in Thannah Gopeegunge? I do not understand the making two *terms* of notice, fifteen days for some balances and thirty days for others. I would rather if need be that it were thirty days *for all.* The less complication in the law, the less work there will be for tricky Amlah and "shifty" Mooktars.	These amendments and remarks should be taken into consideration by the Boards.
MR. MILLS.	
I would alter the terms of notices, and curtail their number as above.	
MR. BROWN.	
The provisions of this Section are entered in a more concise form as Section 7 of the *new* Draft.	
Instances have occurred in which advertisements have been altered in the Collector's Office after they were issued, and even after a sale has taken place. As a check against such rascality I think the Commissioner, being the superintending authority, should also be furnished with a copy of the advertisement.	It will be seen that fifteen days is the *minimum* term for both notices.
Words in Section 6 of Act published "Of the Officer at whose office." — 12. This appears superfluous. Proof of publication will of course be requisite; but the nature of the proof could more conveniently be prescribed in a Circular Order, as some cases may require to be specially exempted from the rule.	
"Peon or other person employed." (13) — 13. Vide last remark.	
"Or of the last four (14) months of." — 14. *Six* will be better than *four*, in order (among other reasons) to embrace petty Estates which pay only two kists in the year.	

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
SECTIONS IV., V. and VI. **LANDHOLDERS' SOCIETY.** Has no remark to submit, beyond suggesting that the notification mentioned in them, should also be published in the *Calcutta Gazette*, 15 days prior to the day of sale,—a measure which by giving greater publicity to the intended sale would invite purchasers, other than those residing in the district, and thus enhance the value of the property. The benefit resulting from this, would be decidedly felt by the defaulter, who, if from circumstances which he could not controul, has been compelled to the extreme measure of submitting to the sale of his patrimony, is certainly entitled to such an indulgence.	For valuable Estates advertisement in the Gazette might be useful. But it would be probably useless in the case of small Estates, which persons unacquainted with the District would not be likely to enquire about.
SECTION VII. **MR. BROWN.** Section XXI. ought to come in this place, in order that the process may proceed *regularly*. "Recording his reasons "for such adjournment" (15) 15. The words "and the number and name of the last Mehal sold," should be added here, or there will be no check against trickery. **SECTION VIII.** **MR. BROWN.** "Out of its regular or- "der by number (16.) 16. Here should be added "or to omit the sale of any Mehal advertised for sale, unless the same be specially exempted," &c. &c. as in Section 15 of the *new* Draft.	These amendments should be taken into consideration by the Boards.
SECTION IX. **LANDHOLDERS' SOCIETY.** By this Section it is clear, that if any Estate cannot be sold, the property of every description belonging to the defaulting proprietor, and in the event of that not being sufficient, his person shall, under Section XIV. Regulation III. of 1794, be liable for the balance. The practical effects of this law, the Landholders' Society believe, would be highly detrimental to the interest of the Agricultural Community, which it is the object of Government to protect. It is evident that under strict construction of *this* law,	This is, in fact, an objection to the present Law. This Section enacts no new Law. The hardship anticipated does not seem ever to have occurred, perhaps from the practice of purchasing unsaleable Estates on account of Government.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
a Zemindar, who has the misfortune to hold an Estate, which cannot realize the full amount of the Government Revenue, or who might have ventured to purchase such an Estate in the hope of improving it, but failed in the attempt from causes over which he had no controul, has no means of relief, but must continue for ever subject to the losses such a property might entail upon him, until all his other properties, and ultimately his personal liberty, are sacrificed, to an honest speculation on the said Estate.	
That such cannot be the intention of Government, the Landholders' Society is fully persuaded, and it therefore earnestly prays, that His Honor in Council will be pleased to take the foregoing observations into favorable consideration, and amend the proposed law, so as to provide against the evils pointed out—which may be effected by a Section empowering Government to put up such Estates for sale once, and in the event of no purchaser appearing, then they place it in farm on *full* jummá—but should that fail, the Estate might then revert to Government and be brought under *Khas* management, and the ex-Zemindar be released from all responsibility for arrears of Revenue accruing subsequent to that date. The ex-Zemindar would of course have to pay the balance for which the Estate was advertised for sale, and any additional balance that might have accrued up to the date when the Estate was placed under Government *Khas* management. It is further submitted that a provision should also be made in the act to admit of the Zemindar paying the amount of his debt should he come forward to do so, on any day before that on which the arrangements for *Ezarah* may be concluded with the farmer, and subject to such conditions as it may please Government to require.	The suggestion for Khas management seems to approximate closely the scheme explained in para. 23 to 28 of the accompanying letter; and in Mr. Halliday's suggestions hereafter given in this table.
MR. HALLIDAY.	
I do not like this at all—it will *not* work. What is to be the power of the Farmer over under-tenures? He must have complete power or why should he take the farm? But suppose he upsets farms, &c. &c. how can the Zemindar re-enter upon like terms? How easy for a Zemindar to make this a means of colluding for the destruction of under-tenures!	It should be borne in mind, that it is optional with the Collector to resort to this measure, or not.
The annual rent of this farm is to be "not less than the fixed Jumma," but when there are no bidders it will be nine times out of ten, because by reason of fraudulent or improvident under-letting, the Mehal cannot pay its Sudder Jumma—what is to be done then? I do not see that this contingency is provided for. Generally on this Section I would say—either you will empower the Farmer to annul tenures or you will not. If you do *not* no one will take your farm at the fixed Jumma. If you *do* you run great	Some provision for farming, after an Estate has been unsuccessfully advertised for sale, for the Provinces not permanently settled, seems needful.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
risks in half a dozen of ways—insecurity, collusion, &c. &c. &c. upon all of which I can enlarge if need be.	
MR. MILLS.	
I do not approve of this Enactment, nor will it practically answer. There are generally bidders for an Estate, but if it should happen that there are none, good reason will be found for the want of them, viz. the inability of the Estate to pay its Jumma, who will farm such an Estate at its fixed Jumma? If no body will take the farm what is to be done, and if farming tenders are procurable what power has the farmer, I suppose he is entitled to collect only from those of whom the defaulting Zemindar received rent. Government should always purchase Estates for which there is no bid or the bid for which is not sufficient to cover the arrears and make a Ryotwarree settlement of the Estate.	
MR. BROWN.	
Of course it is intended that a Collector may still, as heretofore, purchase Estates for Government.	There is no provision in the Draft against purchasing for Government.
"Estate in farm (17) upon tender." 17. Good security ought to be required from such farmers.	There seems no need to legislate as to the security.
SECTION X.	
LANDHOLDERS' SOCIETY.	
Section 10 of the proposed Act provides, that a defaulting Estate under the management of the Court of Wards, in the hands of Trustees, be not sold during the minority of the rightful proprietor. The Landholders' Society has some observations to offer on this Section also, which it begs to submit under two distinct heads, viz. that which relates to Estates under the Court of Wards, and that which regards the Estates, entrusted to the management of private individuals.	It is evident that the Society have been led to make these remarks from a misapprehension of the existing Laws, and of the effect of this Section if enacted.
It is an established principle that the paramount duty of a trustee in charge of a minor's property, is to protect the interest of his ward, and not to involve him in difficulties which may be avoided. This being admitted, should the Court of Wards find any Estate absolutely incapable of realizing the Jumma assessed upon it, it would be the duty of the Court as trustee for the minor to get rid of such Estate, and thus save its ward from the accumulated balances, which every succeeding year would create against him,	This Section, as it stands, makes no alteration whatsoever in the Laws now in full force, and in constant operation.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
and when he came to the management of his property, burthen him with a heavy debt for which his other property, and even his personal liberty, would be liable. Such cannot surely be the intention of Government, and the Landholders' Society prays, that Estates of the kind above described be made *Khas* under the modified provisions of Section 9 of this proposed Act as above explained.	
Besides the arguments urged in the foregoing para. in respect to Estates under the Court of Wards, being applicable in all their bearings to those Estates which are managed by private trustees, there is one which applies with particular force in regard to the latter. A bar being put to the sale of the minor's property, the trustee if he be dishonestly disposed, could withhold payment of the Government demand, even if the Estate was more than able to pay it, and might thus, on the one hand, keep the Government out of its dues with perfect impunity; and on the other, after some years, possess himself of a large amount which he might embezzle, and thus ultimately involve the minor in inextricable embarrassments.	Estates under the management of the Court of Wards are not, under the present law, liable to sale, (Clause 2, Section 3, Regulation XI. of 1822,) nor are the person and other property of any proprietor of such an Estate liable for arrears so accruing, (Section 48, Regulation XIV. of 1793); as the law would so remain after the enactment of this Section, the fears expressed in the second of these paragraphs are groundless.
The Landholders' Society is persuaded, it can never be the intention of Government to place any private individual entrusted with the management of a minor's Estate in such circumstances of temptation, with powers so unlimited, and the fear of responsibility so distant, as would exist under the law in question. The Society therefore submits, that for the sake of clearness a reference be made in this Section to Section IV. Regulation VI. of 1822, and that in such case as the one above contemplated, the Estate should be forthwith put under the Court of Wards, when, should that Court fail to make the Estate solvent, the remedy which has been suggested above in reference to other Estates under that Court, should be applied also to these Estates.	So also, under the present law, (Section 4, Regulation VI. 1822), which this Section is not intended to affect, the Estates of disqualified proprietors not taken under the management of the Court of Wards are, very properly, not liable to sale. Yet the evil anticipated in the third of these paragraphs has never been experienced. The Collector can attach and farm, or the Court of Wards can assume the management, if the Revenue is not paid. As to losses to minors by the embezzlement of trustees, no Law for the realization of the Revenue by sales can obviate or remedy that evil.
In order to remove every possibility of doubt, as to any undue advantage having been taken, or mismanagement having existed, as well as to satisfy the ends of justice and equity, the minor, on coming of age should be permitted to enter on the management of the Estate which had formerly belonged to him, and had been circumstanced as described in the foregoing paragraphs, on his paying in full, the amount of the arrears accumulated during his minority, being the *bona fide* difference between the sums actually collected by Government during its *Khas* management and the Sudder *Jumma* of the Estate.	

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
Mr. HALLIDAY. A Minor's Estate may not be sold though he be *not* under the Court of Wards—this is also the present law. But how if the Revenue Authorities be ignorant of the minority? This really happens—Chuk Bone Hooghly, in the 24-Pergunnahs, was advertised and sold two or three times (each sale being annulled for other reasons) without its being ever known, or pleaded, or supposed that the proprietor was a minor. At last the sale came to be actually confirmed, and then it was found out! And if the Zemindar be a Minor and his Estate under a Receiver of the Supreme Court? This also has occurred.	The Collector should be better informed. A Minor's Estate, if in arrear, can be attached, or the Court of Wards can be applied to. The Receiver of the Supreme Court is like any other manager, and if he lets Revenue of a Minor's Estate fall into arrears, the Estate can be attached by the Collector, who will pay the Receiver the profits. It would not seem proper to require proprietors not qualified to *manage* their Estate, to plead for it, or lose it.
Mr. MILLS. I have known several instances in which it was not found out that the proprietor was a minor until the Estate had been sold. It should be ruled that minority must be pleaded in bar of the sale before the date specified in Section 3 shall have expired.	
SECTION XI. **Mr. HALLIDAY.** Perhaps the words "portion of an Estate," here, and wherever they occur, had better be omitted. According to present practice they are not needed.	Under the present law, a Collector may advertise a portion of an Estate, and so apparently he might do under the proposed law, in some cases. It would probably, therefore, not be safe to omit these words in an *Exempting* Clause, such as this. But the whole question of advertising portions of Estates, under allotments of Jumma, may be considered by the Boards.
"At any time before (18) the day of sale." — 18. The order ought to be passed and issued so as to *reach* the Collector before the sale takes place.	This amendment seems proper.
SECTION XII. **LANDHOLDERS' SOCIETY.** The indulgent provisions of Section XII. the Landholders' Society solicits, should be so far extended as to permit absent parties, not having a Mooktar or constituted Attorney at the Sudder Station, to forward the amount of arrears by means of the public dawk, in Government Papers, in the Notes of the Bank of Bengal, or other Public Securities. The Society does not perceive any objection to this suggestion, and will therefore beg to observe, that it is eminently calculated to give greater practical effect to the provision already made.	The indulgence asked in the first of these paragraphs seems very reasonable; but the President in Council does not see that it is at all inconsistent with the words of the Section in question. It might, therefore, be fully provided for without legislation.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
By the existing Law, a mortgagee or other lien holder of Malgoozaree Land, however insecure he may be, yet, having a full month's notice after the due date for payment of the *Kist* of the *Mohal*, could either press upon his debtor, or prepare himself for the liquidation of the public demand due upon it, and thereby obviate the necessity for the sale of the property; whereas by the above Section, such mortgagee not being certain whether satisfaction of the *Kist* will be made by the mortgager prior to the given date of payment, (at least he the mortgagee cannot ascertain it without actual default, when no payment would be received even if he were willing to pay,) must therefore, in every instance, be prepared with funds to guard against the recurrence of disappointment in payment of Kists on the part of the *Malgoozars*. This serious inconvenience and risk will stand so formidably in the way, that no prudent capitalist will venture to advance any money on the mortgage of Malgoozaree Land.	The observations and suggestions contained in these paragraphs are very important, and demand full consideration.
Thus the privilege granted to the Zemindars by the existing Regulations to transfer their proprietary rights in the lands, without the previous sanction of Government, to whomsoever they may think proper, by sale, gift, or otherwise, or to raise money thereon by mortgage, would necessarily, as far as the last named power is concerned, become inoperative, and this difficulty must consequently be a bar to future improvement of Estates which may be compelled to depend upon borrowed capital.	It is necessary to provide carefully against Zemindars paying arrears after the fixed day, through pretended mortgagees, who might be set up, and registered perhaps for that very purpose, whereby all certainty would be destroyed.
It would be presumption on the part of the Society to bring to the notice of the Supreme Government, the paramount importance of giving security to property. Such security for landed property, and the money advanced thereupon, is more requisite in this country than in any other part of the world, both for the interest of the Governors and the governed, particularly when the public revenue of India depends almost entirely on a Land Tax. The greater the security given to Lands and the money advanced thereupon, and the greater the facility afforded of transfer and negociation, either by sale or mortgage, the greater will be the value of real property, and necessarily more ready will be the realization of the public demand thereupon.	The Boards will have to consider whether the provision suggested by the Society would be sufficient for this purpose.
Under these circumstances the Society desires us to submit, that the proposed Enactment should be modified to the extent of allowing all *bona fide* registered mortgages to pay the *Kist even* prior to the *day of sale*, under such conditions, and fine as the Government (if it should think such necessary,) may deem proper to impose.	If not sufficient, some other measures might perhaps be found, which would give mortgagees all the security they now possess, and more if possible. If there be only three sales in a year, two or three Kists will probably be in arrear some time before the day of payment, if the Estate is meant to be allowed to go to sale. Of this arrear notice might be given where there is a registered mortgage. Indeed it is believed that at present, from the frequency of Estates being advertised whereof the arrears are paid a little before the sale, the month's notice talked of is more nominal than real, as respects a mortgagee as well as others. A mortgagee, who has not an Agent in the District prepared to pay, at short notice, a sum equal to any probable arrear at any moment, is believed to be now no safer than he would be under the proposed law. At all events if the mortgage have not been effected at an overvaluation of the Zemindar's interests in the Estate, (to guard against which is the mortgagee's business,) and if the Estate is sold at auction for a fair price, and before the arrears of Revenue have accumulated excessively, (which it is the main object of this Law to secure.) the mortgagee ought to obtain full payment of his loan out of the surplus sale proceeds.

Suggestions on the Draft Sale Act.

Observations by the President in Council.

Mr HALLIDAY.

An Estate being in balance—A, its proprietor, waits till the last day before the "date of payment fixed as prescribed, &c." (which they will all do) and then presents himself with the money. At the very same time B, "not a recorded proprietor," tenders the balance. Is it intended to make it "obligatory" on the Collector to take the cash from B and not from A? surely not—yet this seems the meaning of the words of this Section. Apart from this I doubt if the fixing of a day for these kinds of payments be a good plan. On this head however I express myself with great hesitation—suppose a man desires that his Estate should be sold—have we any business to prevent him? He may mean very honestly by his friend with the "lien." At least we cannot say otherwise until we go to the entire dealings and transactions between the two, and this certainly is not our present business. At this rate no man will be able to sell or cause his Estate to be sold by auction if any other man for the sake of opposition or roguery, or any of the thousand and one unfathomable purposes of the race of Zemindars and Mooktars, chooses to hinder him. Other things may be said on this head, when the time comes. But I must observe that in the case of under-tenants paying balances of revenue, and thus stopping sale and getting credit for rent, the plan is in my judgment very objectionable. To say that no man shall be permitted to get rid of an Estate by letting it go to sale, so long as any of his tenants chooses to prevent him is prima facie a hardship. It can only be justified by pleading the necessity of saving the under-tenant from destruction by his superior. But I think there may be found a better way of saving the under-tenant from this mischief, without such a plan as this, which will I fear do more mischief than that which it was intended to cure—of this plan of mine I shall speak hereafter.

The verbal amendment alluded to is perhaps desirable.

The substantial objection is worthy of full consideration. But it will lose some weight when it is remembered, that a third party cannot get from the Zemeendar what he pays to the Collector, without obtaining a decree against him for a debt of equal amount; and that no Zemeendar could be thus prevented from eventually selling his Estate at auction, unless some third party continued for ever to pay his Revenue for him. It should be borne in mind, that where interested third parties exist, an auction sale for arrears of Revenue, voluntarily resorted to, can seldom be an honest method of selling an Estate.

Mr. MILLS.

I think this indulgence should be restricted to bona fide mortgagees, and such like lien holders on the Estate, their applications being supported by authenticated and registered documents.

If the Government obtains its Revenue at the time required, and the Zemeendar is saved the necessity of paying it, and a third party wishes to pay it, there seems no necessity for questioning the last mentioned person as to the prudence of his conduct. This depends on his having a real interest in the Estate; if he have none he only is the loser.

Mr. BROWN.

The *wording* of this Section appears objectionable, and liable to be misapprehended by Mofussil Malgoozars, who will be apt to look on the *day notified* as the *last* day. I would therefore suggest that the words used in Section V. of the *new* Draft be substituted.

"From any person not "(19) being a recorded "proprietor."

19. This is liable to misconstruction: the words should be "whether a recorded proprietor or not."

It does not occur to the President in Council that the wording is faulty. It is not under this law that the Collector receives payment from recorded proprietors.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
SECTION XIII. **LANDHOLDERS' SOCIETY.** Section XIII. of the Act which recognizes a further lien in favor of the mortgagee or other person being the holder of a previous lien upon the Estate, to the amount which he may have paid for arrears of Revenue, might, the Landholders' Society thinks, be extended, with advantage, to all creditors of the owner of the Estate, and the said creditors, might in like manner, be allowed to have the benefit of a lien on the property, to the amount of the money they might pay to the Collector in liquidation of the public demand. We are further instructed to submit, that for the better security of such creditors, and in order to guard them against the recurrence of a similar call upon them, the Collector should be empowered, on the application of such creditors, to attach the property, and bring it under the management of a *Sazawal*, in which position the Estate should continue, until the amount advanced for the liquidation of the Government demand, might be paid off. In the case of mortgager continually squandering away the rents and profits of the *Mohal*, and failing to satisfy the revenue (while the bond of the former not being due, the benefit of the provision of Regulation XIII. of 1808, could not be available) the mortgagee would be obliged for his own security to make successive payments to protect the mortgaged property, from being sold on account of arrears of Revenue.	These suggestions will doubtless be considered by the Board. They do not appear to the President in Council to be founded on correct principles, as they confound the personal creditor with the creditor to whom the Land is pledged. Personal creditors will always share in the surplus proceeds of the sale, after paying the public and private claims for which the Land is liable.
MR. BROWN. The insertion here of this, and the next Section (though connected with the one immediately preceding) interferes with the rules of procedure require to be observed at sales. In the *new* Draft, therefore, I have entered these provisions as Section 42.	An amendment of arrangement.
SECTION XV. **LANDHOLDERS' SOCIETY.** The deposit of 25 per cent. on the amount of purchase, required by Section XV., the Landholders' Society fears will be found too heavy a demand, as earnest, on intending purchasers, and it is therefore respectfully suggested that the existing practice of taking 15 per cent. be allowed to continue. On this Section we also beg leave to observe, that some discretionary power for allowing a further reduction in the amount of deposit, be vested in the Collectors. Cases, it is not unlikely, would occur in which this discretionary power might be exercised with considerable benefit, both to Government, and the defaulting proprietor. A purchaser possessing great respecta-	These suggestions seem to deserve full consideration.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
bility and credit, might under the supposition that the Estate he wished to bid for would go within a certain sum, be provided at the time with Funds covering the percentage on each purchase money, and although the bidding exceeded such amount he might at the moment be induced to offer a trifle more. Under such circumstances, the Landholders' Socoiety submits, that it would be injudicious to reject his offer, without taking into consideration its amount, his power to make good the purchase money, and other concomitant circumstances, and thereupon making such a reduction in his deposit as the Collector might think proper. These observations apply with particular force to those absent purchasers, who may empower their Mooktiars to act for them. For even if the purchaser could, at the time, raise the additional amount requisite, it can scarcely be expected, that his Mooktiar could do the same. Under these circumstances, the Society submits that the Collector be vested with discretionary power and demand a deposit of not less than ten nor more than fifteen per cent. on the purchase money.	
SECTION XVI.	
The remarks which the Landholders' Society has to offer on Section XVI. shall be submitted, together with those on Section XXII. they being too intimately connected to admit properly of separation.	
MR. BROWN.	
"Before noon of the fifteenth day* from that on which."	* Is this intended to mean, *whether an appeal be preferred against such sale or not?* — This would be requisite as the Section stands in either case.
20. Suppose the 16th day should also be a Holiday!	Perhaps a Clause might be introduced providing generally for such points.
SECTION XVII.	
MR. BROWN.	
"Than fifteen (21) days from the date."	21. The words "nor more than thirty days" should be added. — The words of Section IV. may be adopted here.
SECTION XVIII.	
MR. BROWN.	
"Shall be competent to the Collector (22) to abandon the re-sale."	22. The words "with the sanction of the Commissioner," should be added here; in order to serve as a wholesome and requisite check against improper indulgence and partiality. This is the more necessary as in case the first sale be abandoned, the defaulting proprietor will lose his lien on the first purchase for the difference of amount bid at the first and second sale. — This suggestion should be considered by the Boards. A Legislative Enactment is not absolutely necessary to accomplish the object.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
SECTION XIX. **LANDHOLDERS' SOCIETY.** The provision of Section XIX. forbids the Officers of the Collectorate to purchase any property that may be sold under this Act, and requires that it should be proved to the satisfaction of the Sudder Board that such purchase was made by any party contrary to this restriction, the property shall be escheated to Government. The order of the Sudder Board to be final. The Society begs to submit, that to prevent any Officer of the Collectorate, from purchasing a property in *Beenamu*, or if purchased, to detect it, would be under the existing constitution of the community nearly impossible; and much harm would be done, if such a system of secret transaction could continue without attaching any direct responsibility to the Officers, who may purchase the property in a fictitious name, or in the name of a relative or friend; nor the Society conceives can there be any impropriety in allowing a Collector's Officer to purchase openly and fairly a property in his Collectorate's sale, making him of course responsible in the Civil and Criminal Courts for his conduct in the transaction. This, we are persuaded, would be a more efficient measure, to prevent the abuse of power, than the one proposed in the Section. Besides the decision of the Sudder Board, being made *final* in cases of this nature, is, we submit, highly objectionable on principle. The Society holds it as an admitted doctrine, and which has also been recognized by the Preamble of Regulation II. of 1793, that in cases of judicial question, the Fiscal Officers of Government should have no interference in it; we are therefore instructed to solicit that the Section be further modified, that no property should be escheated to Government by order of the Sudder Board, until a final Judicial decree of the established Court.	This proposal for a change of the existing Law will doubtless be fully considered by the Boards, with advertence to past experience, and to the arguments here advanced.
MR. HALLIDAY. I entirely agree in the remarks made by the Landholders' Society on Sections XIX. and XX.	
MR. BROWN. This Section, which is numbered 23 in the *new* Draft, appears out of place here; and it ought (in order to prevent misapprehension) to be preceded by the provisions of Section 42.	
"Escheated to Government (23) and whose order shall be final. The amount of the purchase money (24) shall."	23. The words "or otherwise disposed of" should be introduced here; for it may be deemed proper to restore the Estate to the original proprietors. 24. If the purchase money has not been made good by either the nominal or the de facto purchaser, where and how is

Verbal amendments and questions of arrangement.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
it to be obtained? From the Government Treasury? or by the proceeding against the de facto purchaser? And what is to be done in case the latter has no ostensible property?	
SECTION XX.	
MR. HALLIDAY.	
Not "Governor General in Council" surely?	The words Governor General in Council are erroneously inserted for words implying the Local Government. These suggestions will be considered by the Boards.
And why "restored to its original proprietor"?	
Indeed why this Section at all? It might be provided for by adding a few words to Section 19 to the effect that if (besides the modes therein pointed out) it should in any other manner come to the knowledge of the Sudder Board of Revenue, &c. &c. then as provided in Section 19, the lot be escheated—Section 20 seems to have been copied in bodily from the old law but it does not fit here.	
SECTION XXI.	
MR. HALLIDAY.	
If this proclamation be necessary—which I doubt—it should be part and parcel of the notice of sale provided for in Sections IV. and VI.	The proclamation seems necessary, and it is essentially distinct from the sale advertisement.
SECTION XXII.	
LANDHOLDERS' SOCIETY.	
By the Section 22, the ex-Zemindar is permitted to appeal for rescindment of the sale within fifteen days, and the Commissioner alone is empowered to decide upon that appeal. The Society begs to submit that the period of fifteen days allowed for appeal is too short, that in many cases it would bear with great severity on the ex-Zemindars, particularly in the case of an absentee Zemindar living at a place of some 4 or 500 miles distance from the District, where a reply to a letter dispatched by Dawk, could hardly reach within the time allowed: the Commissioner or the appeal authority is moreover frequently on circuit from one District to another, which must, to some extent, risk a delay in the presentation of the appeal petition, when these facts are taken into consideration, we respectfully trust that the Supreme Government will extend the period of appeal from fifteen to twenty-five days. It would also be but just that no purchaser be compelled to pay the full amount of his purchase, fifteen days before the receipt of a notice to be served upon him or his Agent on the receipt of the Commissioner's con-	This suggestion should be considered by the Boards.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
firmation of the sale at the Collectorate. It would be hard indeed if a purchaser were to raise a loan upon heavy interest for a fixed period, say one year, in the hope of retaining the purchased property and then be deprived of the purchase, and his money returned to him, to remain unemployed in his hands, whilst he was compelled to pay interest on it.	
The foregoing paragraph having pre-supposed the payment of the purchase money fifteen days after the notification above mentioned, the necessity of any remarks on the provisions of Section 16, which directs payment to be made fifteen days after the sale, is superseded.	
SECTION XXV.	
LANDHOLDERS' SOCIETY.	
The provision made in Section 25 of a previous application of fifteen days at least for the transfer of a deposit in the Collector's Treasury, evidently involves a great hardship to the party concerned. Indeed, it is an anomaly that a person having his money with the Collector, and yet because it happened to be received a day later than fifteen days before the date fixed for the payment of the demand against him, is not to have the benefit resulting from the transfer of his own money, for the payment of his own debt in the Collectorate. Under such circumstances, the Landholders' Society thinks the shortest notice ought to be sufficient for the transfer, and it accordingly prays that a modification to that effect be made in the proposed Act.	Each of these opposite suggestions will doubtless be well considered by the Boards.
MR. HALLIDAY.	
The fifteen days herein fixed within which application must be made for deposits is MUCH too little. To ascertain whether or not a deposit ought to belong to a party claiming it is often a tedious and difficult task. In Sylhet these claims constitute the heaviest and longest enquiries which the Collector has to make. The rule should run that the application for a deposit should be made at least thirty days before the date fixed for payment of arrears, (and even thirty days in some instances will not suffice.)	

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
SECTION XXVI.	
Mr. BROWN.	
"Provided (25) always, "that nothing in this Act." 25. This proviso (but altered) has been entered as Section 27 in the *new* Draft. It is highly requisite that the decision of the Courts should be strictly confined to the question of *legality*; and that they should not be allowed to interfere on the ground of hardship or on their ideas of equity.	All our Courts are Courts of Equity, and there seems no ground for excluding considerations of equity in these any more than in other cases. But of course no Court can set aside a sale made according to law upon any notion of hardship. See further at Sections 26 and 27.
SECTION XXVII.	
LANDHOLDERS' SOCIETY.	
The spirit, in which the provision of Section XXVII. is conceived, is certainly liberal, but the general term "*equitable*," applied to the conditions on which an Estate is to be restored, appears to be too vague to inspire confidence among the intending purchasers. If a purchaser has in no way connived at the hardship and injustice done to the late proprietor, he ought, in justice, to receive such compensation, as the Government may deem equitable in proportion to the loss of his time and labor in improving the purchased property, and to the possible employment of his money in more profitable speculations.	In the case supposed compensation to the extent mentioned would seem to be necessarily included in "such conditions as may appear equitable and proper." But if a more specific provision can be unobjectionably inserted, it would doubtless be an improvement.
Mr. HALLIDAY.	
I think this a *very bad* provision. It will go near to spoil the whole Law by introducing the old uncertainty what one Government thinks excessive hardship, another Government will think no hardship at all, and the permanence of sales will come to depend on the "Rai" of the Governor for the time being.	Care must be taken in practice to avoid the evil anticipated. Whether a Clause of this sort can, with safety, be entirely dispensed with, is doubtful.
Mr. MILLS.	
Sales may be reversed; first, by the Commissioner; secondly, by the Court; thirdly, by the Local Government. I would recommend the omission of this Section—two chances are sufficient.	No authority whatsoever, except Government, can reverse a sale under the proposed Act, except on ground of illegality.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
SECTIONS XXVI. and XXVII. **MR. DAMPIER.** Make your stopper on the Courts more stringent by adding that they shall not reverse any sale, *save and except* on the grounds of the provisions of the Act not having been complied with. The Sections XXVI. and XXVII. give to the parties full opportunities of having all other grievances redressed by an action for damages, or by the Governor General, and the Court's jurisdiction must be limited, and that strongly.	If, subject to the considerations mentioned at Section 26, a Clause to this effect is thought necessary, there may perhaps be no harm in inserting one. But the President in Council does not clearly see why any special legislation can be required to prevent the Courts from taking away, from a party in a suit before them, land which has been sold to and purchased by him according to law, in the case of an auction sale, any more than in the case of any other sale. If the meaning of the suggestion is that the ordinary jurisdiction of the Courts shall be specially restricted in this particular class of cases, the President in Council must express his disapproval of any such principle. For example, if in any case, without the breach of any specific provision of the Act, a sale is made, which, according to the common principles of law, would be bad, (as when fraud is proved, or when irregularities substantially affecting the fairness of the sale are committed such as no legislation can provide against in detail,) no good effect can result from refusing the ordinary remedies of such a wrong. An action of damages in such a case is not enough to right a wronged seller, he must have his land again, with damages besides, if need be. But an action of damages still remains to a *bonâ fide* purchaser in such a case, and it is quite enough to right *him*.
SECTIONS XXVIII. and XXIX. **LANDHOLDERS' SOCIETY.** In regard to Sections XXVIII. and XXIX. the Landholders' Society has no remarks to make; but on the subject of the payment of the purchase money, adverted to in those Sections, it begs leave to suggest that the Collector be authorized to issue a notice, similar to that mentioned in para. 32, to the purchaser, after the expiration of thirty days from the day on which the sale becomes legally final, to make good the balance of the purchase money within fifteen days as provided for.	The intention is that unless the purchase money have been paid the sale shall not be final; but on the contrary that the Estate shall be resold.
MR. BROWN ON SECTION XXVIII. 26. "All sales of Estates confirmed on appeal." 26. As the Commissioner's *confirmation* will no longer be necessary, it may be better to say "against which an appeal has been preferred, and the appeal dismissed by the Commissioner."	This verbal amendment seems proper.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
27. "Be final and conclusive from the date of such confirmation."	27. This may give rise to some disagreement; for it is possible that a Commissioner may decide such appeal before the expiration of the thirty days mentioned in the next Section, and it is *not* possible that a Commissioner's rejection of an appeal can be communicated so instantaneously to a Collector, as to enable the latter Officer "immediately" to proceed as directed in Section 30. For this reason I think it would be preferable to adopt the words used by me in Section 29 of the *new* Draft.
	SECTION XXX.
	Mr. HALLIDAY.
"To the whole body of proprietors upon their joint receipt." I think the word "recorded" should interpose itself between "of" "and proprietors."	These amendments, chiefly verbal, should be taken into consideration by the Boards.
	Mr. MILLS.
"Whole body of proprietors upon their joint receipt" in some Estates there are fifty proprietors, the residue will be likely to remain for years if we wait for the presentation of a joint receipt.	
	SECTION XXXI.
	Mr. BROWN.
Words in Section XXXI. of Act published. (28.) "Returned to the purchaser, with interest thereon at 5 (29) per cent. from the dates on which they were respectively paid in, to the date on which the refund is actually made (30.)"	28. The words "from the Public Treasury" should be added here. 29. The old rule (vide Board's Circular Order, dated 6th January 1826) was 12 per cent. Perhaps it would be preferable to say 6 per cent. for the reasons stated in the margin of Section 33 of the *new* Draft. 30. This is objectionable; as the party may not chuse to apply for the money for the sake of the interest it bears. It would therefore be better to say "till the date on which the order may reach the Collector."

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Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
SECTION XXXII.	
Mr. BROWN.	
Words in Section XXXII. of Act published. (31) "Subsequently to the day of sale." — 31. Instead of "day of sale," it would be better to say "day on which the Estate was advertized for sale," vide latter part of this Section.	An amendment of this sort is absolutely necessary, with reference to Section 21. But it may be better to substitute the words used in that Section.
(32) "Revenue which fell due." — 32. Read "may fall" instead of "fell.'	This verbal amendment seems proper.
SECTIONS XXX., XXXI. & XXXII.	
LANDHOLDERS' SOCIETY.	
On Sections XXX. and XXXII. the Society does not find it requisite to offer any remarks, and the necessity for the provisions of Section XXXI. appears to be superseded by the amendment proposed in the provisions of Sections XVI. and XXII., vide para. 32 of this address.	
SECTION XXXIII.	
LANDHOLDERS' SOCIETY.	
We beg leave most respectfully to suggest that, as in Section XXV. Regulation XI. of 1822, it be provided in Section XXXIII. of the proposed Act, that persons commencing a regular suit to set aside a sale, shall not be allowed to bring forward any plea, which had not been urged before the Revenue Authorities prior to the completion of the sale. The limit of twelve years generally put upon the prosecution of all claims in the Civil Courts, we beg to submit appears to bear heavily upon purchasers of Estates, and we therefore take the liberty to propose that in Revenue sales, the period be limited to three years only, unless the petitioner should be able to establish some sufficient ground for his laches to the Court. We also beg to submit that it would be a very great blessing to the people, without any sacrifice to the Government to allow the sums remaining in deposit in the Collector's hands, awaiting the issue of a suit to bear the same rate of interest as Government Security for the time being.	The President in Council is not convinced of the necessity and propriety of putting an auction purchaser in a better condition than any other parties against whom suits for land may be brought. If the law of sale is made as precise and intelligible as it may be, and if Collectors proceed with ordinary regularity and method, an auction purchaser has a better assurance of his title than any other purchaser can possibly have. There would seem therefore the less need to provide special Rules of Procedure in his favor. In cases of irregularity such special provisions would be very unjust. The appeal to the Commissioner is a summary measure, intended to remedy, at the earliest moment, and with the least possible inconvenience to all parties, *obvious* illegality. The time for making such an appeal must therefore of necessity be very short. But this summary appeal operates against the very parties for whose security it is chiefly intended, if it limits the time necessary for taking measures, under good legal advice, to have a contested case *fully* enquired into by a competent Court. A hereditary property, worth many lacs of rupees, might be illegally sold, though the illegality might be involved in circumstances of complication and difficulty, and the Proprietor be absent. It would not seem

Suggestions on the Draft Sale Act.

Observations by the President in Council.

reasonable to force the proprietor, who may be wholly ignorant of law, or not aware of the facts, or incapable of setting them forth distinctly, or absent, or disqualified by temporary causes, to set forth every point of his case within ten days, or else to lose his cause.

The security of persons intending to purchase Zemindarees is a great object; but so also is the security of those who now possess Zemindarees. The only way of reconciling the two objects seems to the President in Council to make the law of sale as fair and clear as possible, and the proceedings of sale regular, leaving the Courts of Justice the fullest liberty to settle all disputes.

SECTION XXXIV.

LANDHOLDERS' SOCIETY.

Section XXXIV. provides that in case of any sale being reversed by a final decree of any Court of Justice, the purchase money shall be refunded to the purchaser by Government, together with interest at the rate of five per cent. per annum. The Society submits that it indeed bears very hard on the purchaser that the amount of his purchase should be returned to him at a rate of interest which would often be lower than he was obliged to pay, when raising the said money; or that he could have obtained had his capital been employed in any other way. Under these circumstances the Society suggests that it would be equitable to all parties to leave it to the Court to name the rate of interest on such refunded money, according to the particular complexion of each case.

This suggestion should be well considered. But as this, and all similar disadvantages, are known before hand by purchasers, the real parties interested are the Zemindars whose Estates are sold.

MR. HALLIDAY.

This makes it *obligatory* on the Collector to *attach* for the kind of balances stated in the Section. But I can conceive cases where this would be inconvenient. I think *attachment* should not be specially introduced into any part of the Act, but there should be a Section providing full power in the Sudder Board of Revenue to order attachment in any case instead of sale, if in their judgment more convenient.

MR MILLS.

I would certainly not attach the Estate for the realization of the arrears—attachment is the last expedient that should be resorted to, for attachment in a permanently settled district, never, as far as I have seen, answers. It is with the utmost difficulty that a Tuhseeldar can be procured to undertake the duty, and so sure as he undertakes it, will an action for misappropriating the proceeds if only to gain time to liquidate the arrears of current revenue, be brought against him.

The wording may be altered to show that attachment is not obligatory.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
MR. BROWN.	
Words in Section XXXIV. of Act published. (33.) "Final decree of any Court of Justice." — 33. The words "on the ground of illegality" should be inserted here. This is absolutely necessary in order to prevent the *improper* interference of the Courts. Vide supra Section 26.	See above Section 27.
(34.) "Together with interest at the rate of five per cent. per annum." — 34. If the rate of interest in Section 31 be altered to 6 per cent, it ought to be so here also.	
MR. DAMPIER.	
Section XXXIV. states that in the event of any sale being "reversed by a final decree of any Court of Justice, &c. but there is no declaration in any previous or subsequent Section, in what instances a Court of Justice is to interfere, which there is in Sections IV. and V. Regulation XI. of 1822, and I consider it is highly requisite to limit the jurisdiction of the Courts to the reversal of sales *illegally* held, for *I know* that under the present Law even, Judges have taken on themselves to reverse sales under Clause II. Sections XX. Regulation XI. of 1822, and I have now an appeal pending against such a decree. In fact if the jurisdiction of the Courts is not limited to cognizance and reversal of sales illegally and irregularly held the purchasers will not be safe. Every Judge will make his own Law (what they are rather too much given to now) and reverse the sales as harsh, oppressive, &c. &c. according to his opinion.	See above Section 27. It seems of little use to provide by law that Judges shall not act contrary to law. As Judges have no discretionary power given them in sale cases, more than in any other cases, it seems obvious that when they annul a *legal* sale they act contrary to law.
SECTION XXXV.	
LANDHOLDERS' SOCIETY.	
In addition to the powers vested in the fiscal Officers by Section XXXV. of the proposed Act, the Landholders' Society is of opinion, that those functionaries should also be vested with additional powers to settle boundary and other disputes as provided in Section 33, Regulation XI. of 1822, the dissatisfied party having the right of instituting a regular suit, in the Dewanny Adawlut. The last mentioned Regulation having been rescinded by this Act, the provision of Section 33 of Regulation XI. of 1822, it is suggested should be embodied in the Section now under review.	
MR. BROWN.	
These provisions ought to come immediately after Section 30, and they are therefore introduced as Section 31 in the *new* Draft, with the addition of a wholesome and necessary proviso, to the effect that no plea regarding the non-obtainment of possession be allowed to bar the claim of Government to the Revenue.	These suggestions should be taken into consideration by the Board. Generally speaking, special provisions seem objectionable. It would seem either that the powers of a Court for giving possession are insufficient, or that the same powers should be sufficient for a Collector. But there may be special reasons applicable to auction sales.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
MR. DAMPIER.	
Again in Section 35, should not the Revenue Officers in giving possession in disputed cases, under the powers given them by that law, also have the powers to declare what amount should be paid for such disputed lands, otherwise very expensive litigation may occur, and although Section 39 gives the power of suing under-tenants for arrears of rent by summary suits in the usual manner as Section 10, Regulation VIII. of 1832, is not regularly rescinded. The purchasers will not, under the present law, be able to procure enhanced rents from the under-tenants until after the expiration of a regular suit—I brought to the notice of the Board some time back, and also stated at the meeting held at your house the evil inflicted by that Section on the purchasers at public sales who bought 400 *regular suits* instead of a profitable Estate, and I understood it was to be rescinded.	
SECTION XXXVI.	
LANDHOLDERS' SOCIETY.	
The Landholders' Society believing that the tenures alluded to in the 1st and 2d Clauses of Section 36, are those which are protected by Regulation VIII. of 1793, has no remarks to submit; but in regard to the tenures referred to in the third Clause, viz. lands held by Khoodkast or Kudemee Ryots, having the rights of occupancy at fixed rates, the Society directs us to submit the following observations for the consideration of His Honor in Council.	
The Society concludes that the right of that class of Ryots here intended to be protected is that which is named in Clause 2, Section 60, Regulation VIII. of 1793. With a full confidence in the laudable motives of the Supreme Government to protect by the present Act, the rights of all classes of Landholders and under-tenants, as well as to define more clearly the immunities belonging to their respective tenants, we beg respectfully to submit, that it would be considered a boon by the Landholders and their Ryots, if the particular description of tenures here alluded to, under the designation of "Khoodkast or Kudemee" were to be clearly defined, and the nature of the rights thereto appertaining, fully explained; such a declaratory provision would in a great measure remove the cause of that unnecessary litigation, into which people now so frequently enter for want of a proper knowledge of their respective rights and privileges as secured by law.	This suggestion is well worthy of consideration. But it may be remarked that, with one addition, the classes of tenures saved by this Section are the same as those saved under the present Laws; and the descriptions of them are the same in substance here as in the present Law. It is not the intention to create any rights not before in existence. All Ryots who had, at the settlement, hereditary rights, and all those who succeed them, are intended to be maintained after a sale with their rights in tact. This Law protects no other Ryots. With other Ryots it is intended that an Auction Purchaser shall be at liberty to do whatever the old Proprietor could have done, supposing him to have entered into no engagements with them. But it is not intended to give an Auction Purchaser power to do more than this. An
It is already known to the Government that the tenure Khoodkast Ryots, means as explained in the 32d Section of Regulation	

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
XI. of 1822, Khoodkast, Kudemee Ryots, or residents, and hereditary cultivators having a prescriptive right of occupancy, and that as such, they cannot be ejected from their possession so long as they pay their stipulated rent at a fixed rate according to the Pergunnah Nerick.	
The fundamental Regulation, viz. VIII. of 1793, Section 60, Clause 2, is intended to secure the immunities of those Khoodkast Ryots as were in possession of their lands prior to the period of the Decennial Settlement in holding their lands at the rate of the *Nerick Bundy* of the Pergunnah, and neither the wording nor spirit of the Regulations can be supposed to apply prospectively to all resident cultivators generally who have derived their rights from Zemindars, subsequently to the permanent settlement. The right of the latter must be annihilated with the right of the Zemindar by a revenue sale as provided in Section V. Regulation XLIV. of 1793, with the exception noted in Sections VII and VIII of that Regulation.	Auction Purchaser, under the present Law, retained in this Draft, obtains powers with which the old Proprietor has parted, but he obtains no powers which the old Proprietor never had. If the general Laws are too vague, or obscure, on this important subject, they may be amended by a separate Enactment, perhaps with better effect than by a Clause of the Sale Law.
Thus it will be seen that the resident Ryots may be divided into two classes, viz. those who are holding possession from a period anterior to the permanent settlement, and those who have come to reside on the Estate subsequently to it. The Landholders' Society presumes that the protection afforded by the Clause in question is intended to apply only to the former of these two classes of resident cultivators, and that the latter are to be considered as mere tenants at will.	The objections to the fifth class will doubtless meet with due consideration from the Boards. The mere circumstance that any known law, and *duly recorded* fact, affecting the value of the purchase, may diminish the value of the same to a purchaser, is no valid objection to any provision of the Sale Law, as a smaller price will consequently be bid. And certainly the old Proprietor cannot complain that leases granted by himself are upheld. Government is the only party that can possibly be injuriously affected by this provision. These objections therefore have not convinced the President in Council that the provision in question is otherwise than most beneficial.
If the Supreme Government thus construes the law which the Society doubt not it will, respecting the distinction of the immunities of these two classes of ryots, we are requested to solicit that a definite Section be introduced in the Act to remove existing doubts, on this question, which doubts may often lead to unnecessary litigation and contradictory decisions, particularly in the Courts of Sudder Ameens and Moonsiffs where such questions owing to the amount in dispute, are in the majority of cases brought to issue, and whose decisions under the existing laws cannot have the benefit of correction by an appeal to the Sudder Dewanny Adawlut, the highest judicial tribunal in the Country.	
On Clause 4, Section XXXVI. the Society has no remarks to submit.	
Clause 5 excludes the purchaser of an Estate from the power of ejecting or enhancing the rent of farms granted on good faith by the former proprietor on leases not exceeding 20 years. This, the	

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
Society begs leave to observe, appears objectionable. First, because when a Zemindar finds that his Estate will soon be brought to the hammer, he will consider it his interest to give such apparent *bonâ fide* farms to his relations and dependants, and thereby virtually shackle the purchaser for at least 20 years from making any new arrangement in regard to the lands there farmed out. This would be tantamount to a fraud, and yet the provision under review opens a wide door for it. Secondly, it is an anomally and an inconsistency thus to protect a mere temporary leaseholder, and leave the Puttneedars who have obtained their rights not only on good faith of the former Zemindar, but by actually paying a good consideration, unprotected against the operations of Section V. Regulation XLIV. of 1793, and other laws on that subject. Secondly, by this Clause the rent of such a farm is secured on the data afforded by an average of the rent realized from lands of the same description in the vicinity for the three preceding years. Suppose the Zemindar were to choose such three years as occurred during the late famine in the Upper Provinces, or the inundation which some time before laid waste the Southern Districts of Bengal, when the Estates were, as too well known to Government, unable to pay the Sudder Revenue, and having thus farmed it out at a reduced Jumma, allowed the Estate to be brought to the hammer; how would the purchaser realize from it the Jumma due to Government, and if it fell into the hands of Government, how could the Government get rid for 20 years of these leaseholders who would during that period, under a favorable season, continue to enjoy the advantages of so low a *quit* rent as to be almost a species of *Ayamahdars*? Indeed it would appear that these 20 years leaseholders are for that period, to be placed on a far better footing than the Kudemee Khoodkast Ryots; for whilst the latter have their rents determined according to the *Nerick* of the Pergunnahs, the former by conniving with the Zemindar might have the rent fixed according to the realization of three of the worst years.	
The wording of the Proviso at the conclusion of Section XXXVI. does not appear to be sufficiently clear. Is it meant to bar the Zemindar from ejecting any of his Ryots, without reference to the nature of the tenures? If so, it at once destroys the very basis of the fundamental law on which the permanent settlement stands, by closing the door against all improvement; but if not, a clear explanation to that effect appears to be indispensable. Suppose the Zemindar wished to take the lands from his tenants who were not Kudemee Khoodkast, but Pykast or new tenants, and lay them out himself in a manner so as to yield him a better return	If the Proviso can be more clearly expressed it will be well, though to the President in Council its meaning seems sufficiently plain, and little

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which the Ryot for want of sufficient capital or industry could not, or would not accomplish, has the Zemindar no power to eject the Pykast or new Ryot on his refusing to enter into a new arrangement, and improve his lands? These are questions arising out of the Proviso under reference, which that Proviso does not answer, and therefore we respectfully submit should be taken into consideration and clearly explained.	liable to be misunderstood. The Proviso, as it stands, neither gives nor takes away any immunities. In the case supposed, if the late Zemeendar could eject, putting out of the question any engagement of his own making, the purchaser may eject, and an engagement made by the late Zemeendar will not stand in a purchaser's way. But the purchaser will have no power to destroy any rights originating otherwise than in an engagement of the late Zemeendar, made after the last settlement.
The Society presumes that it cannot be the intention of the Supreme Government at this remote period to interfere with any immunities which were secured to the Landholders by the laws of the permanent settlement, which however would be the case was the power of ejecting all classes of Ryots, refused to the Zemindars without reference to the nature of the tenures.	
The Society desires us to state, that the opinion it has taken the liberty to submit, in regard to the rights and privileges of Sudder Molgoozars and various classes of under-tenants, appears entirely to coincide with that of Mr. Leyceister, the late Senior Judge of the Sudder Dewanny Adawlut, and the Hon'ble Mr. Ross, the late Deputy Governor of Bengal, then Fourth Judge of the Court, in opposition to that of Mr. J. Harington, who attempted in a proposed Regulation in the year 1827, to grant certain new immunities to the Ryots at the sacrifice of the Sudder Malgoozars. But the said proposed Regulation, the Society is glad to find, was rejected without being promulgated or published by the Governor General in Council. We beg to refer the Government to the said Minutes of Messrs. Leyceister and Ross, when it shall again take this subject into its consideration.	
MR. HALLIDAY.	
To this Section I have strong objections, and this seems the proper place to suggest the alteration to which I have alluded in my remark on Section I. Sale for arrears of Revenue is a great evil, though an unavoidable one. It is our duty to make the evil no greater than is absolutely necessary for the purpose for which sales are provided. Perhaps the greatest of all evils belonging to sales is the insecurity which they bring upon under-tenants of all descriptions, and the mischievous power of annoyance and interference, and extortion, which they give to a new auction purchaser over his under-tenants. If we can ameliorate nothing else belonging to sales, we ought at all events, to endeavour to amend this. For if ever any great improvement is to happen to this country, it must come by means of the introduction as *under-tenants* of Zemindars, of men of skill, capital and enterprize. As the law now is, (and	This important suggestion has been fully treated of in the accompanying letter. In respect to the objections felt to the Section, it need only be remarked here, that the law proposed is the same as the present law, except in being more favourable to under-tenures; and that it accords generally with the law as it has stood ever since the permanent settlement. Before that time, of course, no engagement entered into by a Zemeendar had any validity at all, in so far as it affected the Government Revenue passing through his hands. But this consideration does not affect the question, viewed as one of policy.

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the new law will not much improve it,) no man of skill would or could have any thing to do with under-tenures. At least no man could without great risk. Conceive, for instance, the contingency to a farmer for 20 years, desirous of laying out, or perhaps having laid out large capital on his farm, of being threatened (as he usually would be.) with a suit at law by every new purchaser, and being put on his proof once every two or three years, or as often as a sale might take place—or conceive what is still worse, the condition of poor and more defenceless tenants under such a system. Clearly no such interference should be permitted if it can be avoided.

Now the only reason which can at all justify the power given by law to auction purchasers, and the effect produced by law after a sale on under-tenants, is the necessity of securing the Revenue of Government. So far, therefore, as the power and the effect are really necessary to this their legitimate object, the law is defensible, but not a jot beyond this. If A, the present Zemindar of a Mehal, paying 1,000 Rupees to Government, have by any means reduced the rents of his tenants from 2,000 Rupees to 800 Rupees, the Government Revenue is in peril, and the law ought to be enforced in case of sale. But if from 2,000 Rupees he have reduced the rents to 1,500 Rupees, the Government Revenue may not thereby be emperilled, and the law *not* being wanted, ought not to have effect after a sale.

On the whole, the entire absence of bids at a sale, is a pretty fair proof that the Mehal cannot pay its jumma one year with another. Want of bids proves of course other things besides this; but generally speaking, it may be safely taken to prove, that the receipts from the Mehal from some cause or other are likely to be less to a purchaser, than would enable him to meet the Government demand from year to year.

Whenever therefore there are no bids, or no bids equal to the balance, there can be but little reason to doubt that the Government Revenue from that Mehal is in peril; and that in the Mehal in which it occurs, the necessity *has* arisen for the otherwise unjustifiable interference with under-tenures which at present takes place on all occasions of sale, whether the Revenue is in jeopardy or not.

The Decennial or Permanent Settlement was in each case a contract between the State and the Zemindar, and his heirs and assigns in perpetuity, and on failure of payment, sale was provided as a means of remedying the infringement of the contract and of trans-

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ferring the contract to new hands. But it appears never to have been expected that Mehals would be unsaleable or that they would ever be found to produce at sale, a less price than would suffice to pay the whole balance; or so nearly the whole, that the remainder might always be realized by distraint on the defaulter.	
It is clear however that in any case in which the putting up of a defaulter's Estate to sale for its balance, produces *no bids* or no bids equal to the balance; the contract of the Decennial Settlement by that very circumstance is voided and the Mehal may be made forthwith to return to the hands of the State, without any violation of the principles of the Decennial Settlement, or rather, in perfect accordance with them.	
The real effect of such a course of Law is at present produced in practice, by the clumsy expedient of bidding and buying on the part of Government, but there are some pecular objections to this plan, and it would be far better that the same thing should be brought about in a simple manner by direct consequence of Law. I would enact then, *that* no under-tenures of any description should be in any degree affected by the act of sale, and that the purchaser should succeed to the rights of his predecessor, whatever they might have been or might be to be settled in case of dispute, like all other rights, viz. by suit in Court, and	
That in the event of the bidding at any sale for arrears of Revenue not coming up to the balance due, the sale should be postponed until the next periodical sale fixed as aforesaid: when if the bidding should still fall short of the balance due the contract be declared void and the Mehal to have lapsed to Government free from all incumbrances other than those existing at the time of the Decennial Settlement. *Provided*, however, that this shall not be held to authorize the Government to enhance rents or otherwise disturb possession in;	
1st. Tenures which were held as Istimraree or Mocurrurree at a fixed rent, more than twelve years before the permanent settlement.	
2d. Tenures existing at the time of the Decennial Settlement, and which have not been or may not be proved to be liable to increase of assessment on the grounds stated in Section II. Regulation VIII. 1793.	
3d. Lands held by Khoodkast or Kudemee Ryots having rights of occupancy at fixed rates.	

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4th. Lands held under bonâ fide leases, temporary or perpetual, for the erection of dwelling houses, and manufactories, and eing so used, or for gardens, tanks, canals, or like purposes.	
For the rest I am of opinion that the Government may be fairly and safely trusted to deal equitably and justly with all classes of tenants not included in the above exceptions.	
As in Section XXXVII. of the Draft I would enact that the burthen of proof of exemption under the above exceptions shall be on the tenant.	
It is obvious that the security of under-tenants would be vastly increased by the alteration I propose. Instead of being liable to interruption and interference in every case of sale they would incur that liability only when the Estate fell into the hands of Government, and they would incur this liability to interruption *only* from hands least of all likely to convert it into abuse and a means of extortion.	
I conceive that this alteration in the Law would remove the chief evil attendant upon sales of Estates for arrears of Revenue. The evil of disturbance to under-tenants would *never* happen save when it was really indispensable for the security of the Government Revenue, and this is in fact the only case in which such an evil can be justified.	
There can I think be no objection to this alteration of the Law on the score of injury to purchasers. Purchasers who enquire before they buy will give for their purchase no more than it is worth, and if this covers the balance the object of Government will be obtained. Purchasers who buy without enquiry are not much to be pitied if they make a bad bargain. Caveat emptor !	
Nor can there be any objection on the score of injury to the defaulter. If he have by under letting or other means reduced the value of the property he will get a reduced price for it. If he have reduced it below a value which would pay the balance, he has committed a fraud, and will suffer for it. It is to be remembered, however, that under the new Law balances can never be very heavy at the time of sale, and it will be only in cases of great and flagrant deterioration that the balance will ever exceed what is likely to be bid for the Estate. With respect to under-tenants, I have already shewn that the alteration will be greatly in their favor. Disturbance and dispossession will be the exception, instead of as now the rule; and the disturbance when it does come will come from a quarter disposed to indulgence and to equity.	

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It will doubtless happen, sometimes, that an honest and bonâ fide tenant will find himself through the fraud or mismanagement of others exposed to peril of enhancement, but it will now only happen in a very few cases instead of happening in all; and I do not believe that such cases when they do occasionally present themselves, will be treated by the Government otherwise than with fairness and consideration.	
More may be said on this subject and more I shall be ready to say if necessary, but I will not at present lengthen by further arguments on the side of this proposition, a paper which is already far too long.	
MR. MILLS.	
I am strongly opposed to this Section, and after mature consideration of the subject I am disposed to consider the alteration proposed by Mr. Halliday as likely to operate most beneficially in its effects. I have above advocated the purchase of Estates by Government when there are no bidders, and when the bid does not cover the arrears. I would however suggest one attention, viz. that the claims of purchasers shall be in the first instance summarily adjudicated by the Collector under Section 35. The going through the tedious process of the Civil Court in some forty or fifty cases would have an extremely bad effect, it would deter purchasers from buying, and lower the value of the property.	
It will be contended that the Zemindars will take advantage of the law and sub-let their Estates in small parcels among their friends and relatives. Such breaches of faith may occur, but I think the instances will be rare; moreover if the suits are summary, redress will be so quickly afforded that this objection will be of little moment. The rights and interest of proprietors are always sold in satisfaction of decrees of Court. I have never yet found the supposed difficulty of getting possession of such purchases operate to deteriorate the value of property, or that the purchasers did not obtain as easily and completely possession, as the purchase of an Estate sold for arrears of Revenue. These facts convince me that the alteration of the law will not injure purchasers.	
MR. BROWN.	
"Leave as aforesaid was granted (35)." — 35. A proviso should be introduced here of the same nature as that contained in the next Section, viz. that the exceptions are to continue in force only so long as the stipulated rents are paid.	It is not clear that any such proviso is necessary. At any rate it must be more qualified, as some tenures, instead of lapsing on default, are saleable for arrears, in the same manner as the Zemindar's own tenure is.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
SECTIONS XXXVII. and XXXVIII.	
Mr. SMITH.	
In the 21 line, it is said, "Provided that nothing in this Act contained shall be construed to entitle any purchaser of land at a public sale," &c. &c. Now am I to understand this sentence to be restricted to the unsettled Districts, in common with the previous portion of the Section, or to be of general application to the permanently settled and unsettled Districts? 2ndly. Why is not the provision under which a purchaser at a sale for arrears of Revenue is competent to annul and avoid all tenures which originated with the defaulter or his predecessors, &c. (Section XXX., Regulation XI. 1812, Section V., Regulation XLIV. 1793) again declared, quoad the permanently settled Provinces, and why is so important a declaration omitted?	1st. The intention is that the Proviso should have no further extent than the first part of the Section; but this may be made more clear. 2nd. See para. 19 of the accompanying letter.
Mr. BROWN.	
This corresponds with Section XXXVIII. of the *new* Draft. (36.) "Mentioned in the last preceding Section." } Should be "*two* last."	The expression used is a mistake, it should have stood "mentioned in Section XXXVI."
Mr. HALLIDAY.	
According to my proposition this scheme would require modification—and so also Sections XXXIX., XL. and XLV.	
SECTION XXXIX.	
LANDHOLDERS' SOCIETY.	
With reference to Section XXXIX. of the proposed Act, the Society begs leave to observe that Section IX. of Regulation V. of 1812, enables the Zemeendar to sue his tenants for rent summarily, by giving them a year's previous notice, reckoning from Bysack, the commencement of the year; and Section XVI. of the same Regulation provides that without such notice no enhanced rent can be realized from them: but Section X. Regulation VIII. of 1831 virtually rescinds the above laws by providing that the summary jurisdiction to be exercised by the Collector be restricted to the object of enforcing payment of the rents paid in past years to the entire exclusion of all claims, except on proof of *bona fide* written engagements for such increase. Under these circumstances a new purchaser who has not the Kubooluts of the Ryuts nor other documents of the ex-Zemeendar must find it exceedingly difficult to recover his rents. This difficulty is not a little increased by the provisions of Section XXXIX. of the proposed Act, which throws	There are some misapprehensions in these remarks, which must be noticed before noticing the suggestion. This Section would leave the law *precisely* what it now is. Section X. Regulation VIII. of 1831 does not in any way affect the power of enhancing rents according to law. That Regulation in giving summary jurisdiction to Collectors in suits for rent, merely restricted all summary jurisdiction to suits for rent at the old rate, leaving to the Civil Courts suits for newly enhanced rent, not under written engagements, which depend on the *right* to enhance. At present a purchaser has no summary process open to him that is not equally open to all proprietors.

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the Zemeendar upon the necessity of regular suits in the Civil Court for the recovery of rents. Because in the absence of these documents it is impossible for the purchaser successfully to prosecute summary suits on taking possession of the Estate. Now three years is the least which would be required for a Zemeendar under the existing Law to be able to ascertain *judicially* the nature of the different tenures held by his Ryuts, and the rents due for them respectively.. During this period he must not *only* pay the Government demand out of his separate funds but *be* also put to the necessity of conducting perhaps as many regular and appeal suits as he may have tenants, and paying all the costs attendant on these suits which in a large Estate would be far from inconsiderable, perhaps the cases might amount to 7 or 8000.

Under these circumstances an intending purchaser must in estimating the value of the Estate take into account the expence of Law charges he may be obliged to incur, the trouble he must have in conducting them, the delay he must be subjected to, and the funds he must provide for paying the Government demand all the time he is kept out of his rents. All these considerations (none of them unimportant) he will naturally place against the advantages he expects from purchase, and then decide whether he can prudently and safely venture on it. In a country like this the public Revenue of which depends, as we have already said, almost entirely on its land tax, the impolicy of creating these difficulties and necessarily reducing the value of the land is too manifest to need further notice.

Another consideration which the Government should not lose sight of is the probability of an Estate thus circumstanced being forced upon its hands under circumstances which have already been spoken of, and of its being placed in the situation of the purchaser whose difficulties and disadvantages have been enumerated in the foregoing paras.

To remedy these serious evils the Landholders' Society begs respectfully to suggest—1stly, that the provisions of Section IX. Regulation V. of 1812 be restored to their original force, and that Summary Suits be allowed to be instituted by the Zemeendar on his giving due notice as required by that Law, with this exception that the provision which restricts the time of serving the notice to the commencement of the year be not applicable to the new purchaser during the first year of his purchase, but that he be allowed to prove such notice and get the benefit of the provision at any time after he shall have obtained possession of the purchased property.

Observations by the President in Council.

Therefore Section XXXIX. of the proposed Act does not increase the difficulty complained of. Nor does it seem *necessarily* to throw the Zemeendar upon regular suits in the Civil Courts for the recovery of rents. All that can be said is that it does not give any remedy to the purchaser other than what he now has. If, however, that remedy is found to be insufficient, there is good reason for considering whether any summary process can with propriety be given specially to auction purchasers.

The President in Council is not inclined to think that any disputed claim to an *enhanced* rent, which involves questions of title, can with propriety be made the subject of a summary suit. Nor does the analogy of the summary process against the Zemeendar hold in such cases. For the Government cannot enforce by any summary process a claim to *enhanced* Revenue.

But it must be admitted that, as regards the realization of rent at the existing rates, an auction purchaser has a peculiar disadvantage, in not being in possession of the accounts of the late Zemeendar, whereby to prove the rates formerly paid. On this ground it may be proper to throw the burthen of proof upon the Ryot, Talookdar, or other tenant, who in a summary suit for rent at a rate not exceeding the Pergunnah rate, instituted by an auction purchaser within a certain time from his obtaining possession, pleads that the rent claimed is at an enhanced rate, which the purchaser has no right to demand: facility being afforded to all such Ryots, Talookdars, and other Tenants, to record before hand, and during the solvency of the Zemeendar, the rates of rent at which they are admitted to have a right to hold.

Under no circumstances could it be allowed to a Purchaser, or any other Proprietor, to enhance the rates of rent for the *current* year.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
The Society also begs leave to suggest that the provisions of Sections IV. to VIII. Regulation V. of 1812 which are now applicable only to the cancelling of collusive *Pottahs* be extended to all suits instituted under the above notice, reserving to the parties the rights of preferring a regular suit, the summary decision in such a case of course not in any manner affecting the rights of the parties to it.	
The Society takes this opportunity of submitting that as Government is very properly about to adopt by the proposed Act more efficient measures to recover the Revenue due to it from the Malgoozars, and of which the Society is pursuaded that no Zemeendar, in the permanently settled Province, can have any reason to complain that it would be an act of justice were the Sudder Malgoozars who are made subject to so heavy a requisition by the said Law, furnished with more expeditious means for the realization of their rents from under-tenants than that provided for by Clause 7, Section XV. Regulation VII. of 1799.	
The provision in question, however inefficient for the recovery of rent still by its being modified by Section X. of Regulation VIII. of 1831 which provides "that the summary jurisdiction to be exercised by the Collector shall be restricted to the subject of *enforcing payments of the rents paid in past years* to the entire exclusion of all claims to increase was rendered a formidable bar to the realization of the just claims of the Zemeendars; as no proviso appears to have been made against the contingency of the calamity of the season which might reduce the realization of rent for a few years below the actual standard of the *Jumma*, and in such case a Zemeendar for his indulgent consideration towards the Ryots, would be deprived of the benefit of Summary Suit in regard to the *actual Jumma*.	
Besides in a Summary Suit, even when preferred according to the provisions of the existing Law, and its proceedings conducted with all expedition, while the claim commands the advantage of the written *Koobulut* of the Ryuts, and when the suit is allowed by him to proceed *ex-parte* without any opposition by a sham plea—the final decree of the case and the recovery of the rent under the execution of the said decree will, from the forms of practice of the Court, be delayed at least three or four months—and in case of opposition or defect of written evidence *this* delay may be infinitely increased so as to render this remedy abortive, should the Supreme Government deem it necessary to ascertain the practical operation	

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
of the summary suit, we beg to suggest that reference be made to Mofussil Authorities for returns of any one year containing the dates of commencement of the summary suits, their final decision, and when money was realized by the plaintiff.	
The Society submits that it is a severe hardship upon the Zemeendars that the demands of Government should be enforced against them under one Law which affords neither indulgence as to the time of payment, nor allows a judicial form of process, whilst on the other hand the Sudder *Malgoozars* are compelled to enforce their claims against the Ryuts out of which the dues of Government must be collected by a process involving considerable delay, expence and annoyance. It is evident that the reason for a summary enforcement of the claims of Government against the Zemeendar is still stronger in the case of the Zemeendar against the Ryuts, as the latter can in almost all cases run away and remove his property, whilst the Zemeendar cannot in any mode diminish the value of the property out of which the claim of Government is to be satisfied.	
In order to remove the grounds of complaint above submitted without requiring an extensive alteration either in the existing law or the forms of proceeding, we are directed respectfully to suggest that as all hereditary transferable Ryut tenures known in different districts by various names as *Jote Gattey, Howalah,* &c. are in principle almost the same in regard to rights and immunities as Putnee leases that the provision of Regulation VIII. of 1819 be made applicable to them with this modification of Section VIII. viz., that the sale of the said tenures for arrears of rent be made quarterly instead of half yearly. To guard against any possible abuse of power on the part of the Zemeendar or of the indulgence on the part of the Ryut, we further suggest that when there is no written engagement, the amount so made recoverable on the part of the Zemeendar by summary process, be limited to the highest amount of rent actually paid by the Ryut in any one of the 12 years immediately preceding the suit.	
2. When the amount is specified in the *Kuboolut* that sum to be the limit of the summary process.	
3. That when the amount is defined by a previous decree, whether summary or regular, then the suit to be limitted to the amount so defined, and that neither are increase of *Jumma* on the part of the Zemeendar or abatement on the part of the Ryut be cognizable without the formal decision of a competent tribunal.	

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
Mr. BROWN. This Section corresponds with Section 39 of the *new* Draft.	
Mr. SMITH. In Section XXXIX. it is enacted "that the claims of purchaser whether in regard to the enhancement of rent or ejectment of tenure under the provisions of Sections 36 and 38 of this Act shall be adjudicated only by the Civil Courts." By this is intended to interfere with the existing Law for instance, Section X. Regulation V. 1812 as to enhancement by some process after notice, and Chapter V. Section XVIII. Regulation VIII. 1819 under which the plaintiff is empowered of the decree be not immediately paid into Court, "to make other arrangements for the future management of the land in question."	It was not the intention to interfere with any existing Law on this subject.
Mr. DAMPIER With reference to the Section 35, I think you should give the Revenue Authorities power to adjudicate and decide on all questions, subject to a regular suit, arising under Section 36, and they should have power for two years subsequent to any sale to secure and decide summarily questions for enhanced rents in purchased Estates. It is perhaps desirable that the Zemeendars, i. e. old Landholders, should be made to have recourse to regular suits for any claims to encreased rental, but it is absolutely necessary for an auction purchaser to have a speedier remedy. The average time taken in deciding a summary suit throughout my Division is two months and a half, and the average time of a regular suit in a Moonsiff's Court saying that it is done *in the quickest* way is five months or six. And then there is execution of it, but I may say that under the *present* system a year is the quickest time for a decision to be arrived at and during that time the purchaser is paying out of his own purse and receiving nothing. The Revenue Authorities are the legitimate authorities for such decisions in the first instance, and you may check them by a regular suit if you please, but look now at the contradictions between Section 9, Regulation V. of 1812, *unrepealed*, Section 10, Regulation VIII. of 1831, and Section 39 of the present law, to which I may add Section 33, Regulation XI. of 1822, about to be repealed. I know instances where capitalists would not purchase Estates because they would not be forced into Civil Courts. Again refer to ——— how he and I broke up in three weeks the combination of Talookdars in Bulloah Pergunnah under Clause 2, Section 28, Regulation XI. when the proceedings of the Civil Court had failed and the Pergunnah was the scene of affrays and fights—so much	See the Observations recorded on the suggestions of the Landholders' Society.

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so that I reported as Superintendant of Police the necessity for sending a Commissioner.

The Revenue Authorities are really in my opinion the persons to decide on all disputes in regard to rights between the auction purchasers and sub-tenants, their decisions being liable to a regular suit, for it is with them that all the information and knowledge regarding the tenures, &c. exist. [Mr. Dampier argues that it is necessary to give speedy relief to a bonâ fide auction purchaser from the consequences of the late occupant's proceedings, and that the speedier this is afforded the greater will be the check against the creation for a *consideration* of those under-tenures which press so heavily on the actual cultivator.]

SECTION XL.

MR. DAMPIER.

In Section XL. should not a distinction be made in favor of Coparcener, where the Estate is under Butwara? Such is the case now, and it is always the practise to consider each share in such cases as a distinct Estate, and the sharers who have paid up have liberty to purchase the shares of their defaulting Coparceners.

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Equity and justice require that a sharer who does not default, should not be barred from the rights enjoyed by other purchasers, for he is as much a *bonâ fide* purchaser of the Estate as any other. The provision of Section XL. we therefore beg respectfully to submit, should be modified on these grounds. The proposed modification being the present practice, we trust it will receive the sanction of Government.

SECTION XLI.

MR. BROWN.

This corresponds with Section XLI. of the *new* Draft.

Observations by the President in Council.

The proposed Draft Act does not affect any provisions of the Butwarra Regulations. But a proviso saving the rights of joint owners of Estates under Butwarra may probably with advantage be inserted. See Sections 33 and 34, Regulations XIX. of 1814; and the Circular Order of the Board No. 281, dated 15th February, 1836.

This is a mistake. Under the present law unless the Estate happen to be under Butwarra at the moment, no sharer (who must be a defaulter) can purchase at all. (See Clause 2, Section XX. Regulation XI. of 1822.) If he bid, he is liable to fine, and the sale is void. By the proposed law this restriction is removed; but it is obviously necessary at the same time to prevent a Zemeendar, by defaulting and purchasing himself, from cancelling all the under-tenures he has himself created. As all sharers are liable for the whole arrear, when there is a legal sale, there cannot be a sharer who does not default.

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
SECTION XLII.	
MR. BROWN.	
This Section appears out of order here, and it has therefore been entered (slightly modified) as Section XXII. in the *new* Draft.	
MR. DAMPIER.	
I do not think Section XLII. of much use; it would be better to leave it out. It will only affect cases where two rogues quarrel, but not where they agree to defraud another person.	In this the President in Council does not agree.
SECTIONS XLI. and XLII.	
LANDHOLDERS' SOCIETY.	
On the Sections XLI. and XLII. the Society has no remark to make.	
It may often happen on occasions of sale, that a person bidding for an Estate has not a regular *Mooktear-namah* at the time, from the person on whose behalf he may be bidding. It would therefore, the Society thinks, be better if the name delivered at the time of the payment, and not that given at the time of the sale, be considered as the recorded name of the proprietor of the Estate.	The Agent may give in the name of his principal, though he have not a formal power.
SECTION XLV.	
MR. BROWN.	
Words in Section XLV. of Act published. "The purchaser only acquires the rights, interests, and title passed by the said defaulter or surety." — This should be duly notified in the advertisement, and at the time of sale.	This seems a very proper measure.
"Provided, however, (37.)" — 37. I am free to confess that I do not at all comprehend this Proviso; nor can I imagine a case to which it can apply. As I think it likely to be misapprehended and misused I have left it out of the *new* Draft.	The meaning of the Proviso, (which is taken from Section XXIX. Regulation XI. of 1822) is that if Government take possession of an Estate unlawfully, and sell it to a third party, by whose default it is subsequently sold for arrears to a fourth party, the sale shall not bar the restoration of the Estate to its original and rightful owner, on his obtaining a decree against Government for the same.
SECTION XLVI.	
MR. BROWN.	
This Section, *considerably* modified, so as to embrace every possible case to which the principle can apply, is entered as Section XLIII. in the *new* Draft.	

Suggestions on the Draft Sale Act.	*Observations by the President in Council.*
Words in Section XLVI of Act published "On paying the arrears with interest(38) and charges due" — 38. This has obviously been copied verbatim from Section XXIX. of Regulation XI. of 1822, without reference to the abolition of all interest by this Act.	
"Directing the Collector, Deputy Collector, or other officer as aforesaid, on receiving from the said plaintiff, the amount of arrear due, and of charges, to put the said plaintiff in possession" — No Proviso is here made (as should be) for the order being so issued as to *reach* the Collector and for the money being paid to him *before* the sale takes place!	
LANDHOLDERS' SOCIETY.	
With reference to Section XLVI. we beg to submit that a man suing another may sometime be unable to give security. In such a case it would be a great relief if he were permitted on presenting a petition to that effect to have the Estate attached and brought under *Koruck* management, and thus the Government demand be realized and the balance, if any, await the decision of the suit.	These suggestions should be taken into consideration by the Boards.
The Society has but one further remark to submit. Section I. of the proposed Act repeals the existing Laws, in regard to the recovery of rents, and other provisions as therein specified, and Section XXXVI. of the same Act provides only for such as become purchasers under that Act, evidently leaving the case of those who may make purchases before the date of the promulgation of this Law, but have not been able to realize their possession or rents, unprovided for. The Society would beg leave to suggest as a remedy that the provisions of this Act be allowed to have a retrospective effect, in all cases, which would prevent the creation of a new and distinct kind of right, and lead to a great confusion in the administration in the Moffusil, and eventually require separate Laws to provide for them.	
In conclusion, the Landholders' Society instructs us to say that it regrets much that this letter has extended to such length, but the importance of the subject will plead an apology; and we are further desired to state that the Society will at all times be ready to afford any further explanation on the points mooted in this address, or any other point on which His Honor in Council may thinks proper to call for explanation.	

B.

The following *New* Draft of a proposed Act for amending the Bengal Code in regard to the Sale of Land for Arrears of Revenue, is respectfully submitted in lieu of that read in Council, for the first time on the 14th October, 1839 :—by

G. F. BROWN.

Remarks by Mr. G. F. Brown.

A copy of the *original* Draft read in Council on the 14th October last, accompanies this document, with marginal notes by Mr. Brown, pointing out the necessity of the alterations contained in this *new* Draft.

(1) This Clause is necessary in consequence of the exemptions provided for at the end of Section V.

(2) This date will be the commencement of the official year, agreeably to which the Revenue demands are regulated; and it will therefore be the most convenient that can be chosen.

This is a new Section, not contained in the *original* Draft read in Council on the 14th October. The provisions here proposed for adoption are obviously required to make the Act complete.

(3) This is to meet the possibility of *Uncovenanted* Officers being authorized to conduct sales. N. B. Care must be taken not to put any stop after the word "Officers,"—or the sense will be affected.

This Section corresponds with Section II. of the *original* Draft; but the provi-

ACT No. OF 1840.

An Act for amending the Bengal Code in regard to the sale of Estates for arrears of Government Revenue.

I. Whereas it is deemed expedient with a view of benefiting the agricultural community, to reduce the number of periodical sales of Estates for arrears of Revenue; to discontinue the levy of interest and penalty upon such arrears; to provide for the absolute sale (under (1) restrictions in certain cases) of any Mehal, the whole of the Government Revenue due from which may not have been punctually discharged on or by appointed days; and otherwise to amend the laws for the realization of the public demand—It is hereby enacted that from the first day of May (2) 1840 Regulation XI. of 1822 and Regulation VII. of 1830 of the Bengal Code, except so far as they rescind other Regulations or parts of Regulations, are repealed: and it is enacted that the following rule shall be in force in their stead.

II. That the several Collectors and Deputy Collectors of districts; Covenanted Civil Servants superintending the collections of separate Mehals or tracts of country; and other Officers (3) specially authorized by the Sudder Board of Revenue, shall be empowered to hold sales under this Act by public auction, for the realization of arrears of Government demand on Estates in the manner hereinafter directed.

III. That the Government demand on Estates shall be restricted to the principal amount due therefrom, and

sions are here made positive as well as negative, in order to render the subsequent Sections more easily understood.

that no demand shall be made on account of interest or penalty upon any arrear which may fall due after the date specified in Section I. of this Act.

This Section corresponds with Section III. of the *original* Draft. The alterations which have been made are explained in my notes on the margin of that document.

IV. That as regards the permanently settled districts in the Provinces of Bengal, Behar and Orissa, the Sudder Board of Revenue in Calcutta shall determine upon what dates the several instalments of the public Revenue, with all arrears thereof, shall be required to be paid up. And the said Board shall give notice in the Calcutta Gazette of the dates so fixed, and shall direct publication of such notice to be made in each district, in the language generally (4) understood therein, at the Cutcherry of the Collector or other Officer authorized to hold sales under this Act, at the Courts of the Judge, Magistrate, Principal Sudder Ameens, Sudder Ameens and Moonsiffs, and at every Thannah Station in the district.* And the dates so fixed shall not be changed except by order of the said Board, promulgated in the manner above described and notified in the Calcutta Gazette one full month before the commencement (5) of the year in which the new date or dates are to take effect.

(4) Or "commonly." This is better than "*the* language;" for in some districts there are more than one.

(5) This appears to me a clearer and more easily intelligible expression than that of "before the close of the year preceding that in which, &c."

This Section corresponds with Section XII. of the *original* Draft.

V. That it shall be obligatory on all Collectors or other Officers in charge of the Collections, within the permanently settled districts aforesaid to receive at any time before, or till Sunset of, the dates fixed (6) as prescribed in Section IV. of this Act, any amount of Revenue, or portion of Revenue, due on account of any Estate, from any person

(6) This time will be much better understood by the commonality than that of—"at any time on the last day before the dates of payment fixed, &c." For the people in general will always suppose that the *day fixed* must naturally be the *last* day for receiving money. The time of *Sunset* is also less liable to mistake and dispute than "*noon*" or "*any time*."

(whether a recorded proprietor of the said Estate or (7) not) who may tender the same, and to pass such amount to credit of the said Estate, and to grant to the person making such payment a receipt for the same, under his official sig-

(7) In the *original* Draft only "persons not being recorded proprietors" are mentioned; ergo a Collector might refuse to receive money tendered by a *recorded* proprietor! The application of the principle to persons *not* recorded proprietors is carried out in Section XLII.

* Vide Note A at the end of this Draft.

(8) This corresponds with the first part of Section IV. of the *original* Draft; and naturally proceeds out of what has gone before, instead of being disjoined from it, as in the original Draft.

nature and seal. But no sum shall be receivable (8) on account of any Estate which may be in arrear after the dates so fixed; but such Estate shall be forthwith advertized for absolute sale, in the manner hereinafter set forth, unless specially exempted as provided in Sections XI. and XLIII. of this Act.

This Section corresponds with the latter part of Section IV. of the *original* Draft.

VI. That in the permanently settled districts aforesaid, every Collector or other Officer in charge of the Collections, shall as soon as practicable after the dates fixed as prescribed in Section IV. of this Act, prepare an advertisement in the language of his district, of all* Estates the Government Revenue due from which may not have been fully and entirely discharged. In such advertisement shall be specified the Estate or Estates to be sold by public auction; with the Sudder Jummah and the nature and amount of the arrear due from each, (9) and the day on

(9) The insertion of these particulars is very necessary for obvious reasons. Intending purchasers ought to be made acquainted with the *Jummah* for which an Estate is responsible; and the amount of *arrear* should be publicly made known both for the satisfaction of the defaulter, and as a wholesome check against tricks in the Collector's office; for such a thing has been known as an Estate being advertized, and sold for an alleged arrear which did not exist.

which the sale will commence; which day shall in ordinary (10) cases be not more than one month from the date prescribed according to Section IV. of this Act, nor in any case less than fifteen days from the date of affixing the advertisement on the Cutcherry of the Collector or other Officer aforesaid. And transcripts of such advertisement shall, at the same time, be prepared by the Collector or other Officer aforesaid, and affixed with all practicable despatch to the

(10) It will not be practicable to make the rule binding in *all* cases; for in some districts (Tirhoot for instance) the advertisements contain from 2 to 3,000 lots. Of such advertisements, according to this Act, no fewer than six copies must be prepared;—this can scarcely be done in so limited a period. Again in cases provided for in the next Section, a period exceeding one month *must* very often be allowed. For these reasons the word "ordinary" has been substituted here.

(11) Commissioner's Office, the Courts of the Judge, the Principal Sudder Ameens, Sudder Ameens and Moonsiffs, and the Police Thannah within the jurisdiction of which the lands advertized, or some part of them, may be situat-

(11) Instances have occurred in which advertisements have been fraudulently altered in the Collector's Office after issue, and even after the sale has taken place! As a check against such rascality I think it would be as well for the Commissioner,

* Vide Note B at the end of this Draft.

who is the appellate authority, to be furnished with a copy of the advertisement.

This Section corresponds with Section VI. of the *original* Draft.

(12) The word "*six*" has been substituted for "*four*;" in order to allow of a great number of small Estates, the Jummah of which is payable in only two half yearly instalments being included under the provisions of the *preceding* Section.

This Section corresponds with Section XXI. of the *original* Draft; but the provisions appear to come more appropriately in this place.

(13) This proclamation, to be of any effect, must be issued simultaneously with the advertisement of sale; instead of "as soon after as may be."

This Section corresponds with Section V. of the *original* Draft. Under the impression that the rule has been approved of by the Upper Board of Revenue, I have not suggested any alteration; but I may be allowed to observe that by Regulation XI. of 1822, and Regulation VII. of 1830, the process for the Province of *Benares* was the same as that for *Bengal;*

ed; and to the Malgozary Cutcherry of each Estate advertized, or to some conspicuous place upon such Estate.

VII. Provided that no Estate shall be sold for the recovery of any arrear or demand of the descriptions mentioned below except the transcript advertisement required by the preceding Section to be affixed to the several places therein mentioned, shall have been so affixed at least fifteen days prior to the sale being held.

First. Arrears other than those of the current year, or of the last six (12) months of the preceding year.

Secondly. Arrears the payment of which has been suspended over one periodical sale by competent authority.

Thirdly. Arrears of Revenue due on account of other Estates.

Fourthly. Arrears due on account of Tuccavy, and Poolbundy, or other demands not being on account of Revenue, but being recoverable by the process for the recovery of arrears of Revenue.

VIII. And it is hereby enacted, that whenever an Estate or Estates shall be notified for absolute sale, as provided by Section VI. of this Act, the Collector, Deputy Collector or other Officer aforesaid, shall append (13) to the advertisement and transcript Advertisements, which by the said Section he is required to prepare a proclamation in the language of his district, forbidding the Ryots and under-tenants of such Estate or Estates to pay rent to the defaulting proprietors from the date of such proclamation to the date of the subsequent notice hereinafter prescribed by Section XXX. of this Act, on pain of not being entitled to credit in their accounts with the purchaser for any sums paid within the period aforesaid.

IX. That as regards the districts not permanently settled, and in the province of Benares, no Estates, and no rights, interests or title in an Estate shall be advertized for sale, for the recovery of arrears of Revenue, without the special sanction previously obtained of the Sudder Board of Revenue within whose jurisdiction the same may lie; but when an advertisement of sale in such Districts, or in the said Province, shall be sanctioned, the Estate or Estates whereof the sale has been sanctioned shall be ad-

and both being permanently settled, there appears no reason why a difference should now be made. Besides, under the old rules, the approval by a *Commissioner* of an advertisement was deemed sufficient; and it seems strange that while even this is dispensed with in one part of the country, the sanction of the *Board* should be considered indispensable in another part.

vertized for absolute sale in the manner prescribed in Section VI. of this Act; and all the Provisions of this Act so far as they are applicable, shall apply to Estates so advertized.

This Section corresponds with Section X. of the *original* Draft.

X. That no Estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards; and no Estate, the sole property of a Minor or Minors, and descended to him or them by the regular course of inheritance, but of which the Court of Wards has not assumed the management under Regulation VI. of 1822, shall be sold for arrears of Revenue accruing subsequently to his or their succession to the same, until the Minor or Minors, or one of them shall have attained the full age of 18 years. And no Estate held under attachment by the Revenue Authorities, otherwise than by order of a Judicial Authority, shall be liable to sale for arrears accruing whilst it was so held under attachment. And no Estate held under attachment by a Revenue Officer in pursuance of an order of a Judicial Authority, shall be liable to sale for the recovery of arrears of Revenue accruing during the period of such attachment, until after the end of the year in which such arrears accrued.

This Section corresponds with Section XI. of the *original* Draft.

XI. That it shall be competent to the Sudder Board of Revenue, and to the Local Commissioner of Revenue, to exempt any Estate, or portion of an Estate from being advertized for sale in the manner prescribed in Section VI. of this Act; and in special cases to exempt any Estate or portion of an Estate from sale, even after it may have been so advertized at any time before the day of sale; provided always that such order shall specify the reasons for exemption, and be dispatched so as to reach the Officer holding the sale, before (14) the sale shall take place. And in such cases arrears on account of the Estate or portion of Estate exempted from sale, shall be receivable, any thing in Section V. of this Act to the contrary notwithstanding.

(14) This is obviously most necessary, or the greatest confusion and perplexity may ensue.

This Section corresponds with Section XXIV. of the *original* Draft.

XII. That no claim to abatement or remission of Revenue, unless the same shall have been allowed by the authority of Government, nor any private demand or cause

of action whatever, held or supposed to be held by any defaulter against Government, shall bar a sale; nor render a sale under this Act illegal.

This Section corresponds with Section XXV. of the *original* Draft.

XIII. That no claim on account of a deposit in the treasury of the Collectorate at which the sale is held, shall bar a sale, nor render a sale under this Act illegal, unless the party objecting to such sale prove that application was made in due form, and to the proper authority, for the transfer of such deposit to the credit of the Estate sold, by the party entitled to require such transfer to be made, fifteen days at least before the date fixed in the manner prescribed in Section IV. of this Act, if the Estate be in a permanently settled District of Bengal, Behar or Orissa, or otherwise at any time before the date fixed in the manner prescribed in Section IX. of this Act.

This is a new Section, and is obviously required in order to make the Act complete.

XIV. That sales under this Act shall be held by public auction, in the presence of the Collector or other Officer duly empowered as hereinbefore provided, in some building or tent used as an office and open to the public, or other open and convenient place thereunto belonging. And the Officer conducting the sale is enjoined to give every publicity to the occurrence by proclamation or otherwise before and during the time of sale, at the entrance of the building or place, in which the auction may be held.

This Section corresponds with Section VIII. of the original Draft, but the provisions have been modified so as to render them more complete.

XV. That on the day fixed for the sale to be held as prescribed in Section VI. of this Act, the Mehals advertized for sale shall be put up and sold by public outcry to the highest bidders, without reservation in due order, that is to say, the Estates to be sold bearing the lowest number on the Towjee or the Rent Roll of the District are to be put up first, and then the next lowest, and so on in regular sequence, And it shall not be lawful for the Collector or other Officer as aforesaid to put up any Estate out of its regular order by number, or to omit (15) the sale of any Estate advertized for sale, unless the same be specially exempted as provided in Sections XI. and XLIII. of this Act.

(15) This provision is obviously of essential importance.

This Section corresponds with Section VII. of the *original* Draft; but the provisions have been modified with a view of rendering them more complete.

XVI. That in case the Collector or other Officer aforesaid shall be prevented by sickness or other good cause from commencing the sale on the day notified in the advertisement: or if having commenced it, he be unable, from the day having closed or from other sufficient cause, to proceed with it, he shall be competent to adjourn the sale to the next day following, not being Sunday or other close holiday, re-

cording his reasons for such adjournment, together with the name and number of the Mehal last sold, and announcing the adjournment by a written proclamation, stuck up at the entrance of the building or place in which the sale may be held; and so on from day to day, until he shall be able to commence upon or to proceed with the sale. But with the exception of adjournments so made, recorded and reported, each sale shall invariably be made, on the day of sale fixed in the manner aforesaid. And it shall be incumbent on the Collector or other Officer aforesaid without loss of time to forward a copy of the record made by him of each such adjournment to the Revenue Commissioner of the Division on which the Estate may be situated.

This Section (but modified so as to be more complete) corresponds with Section XV. of the *original* Draft.

XVII. That on each Estate being put up for sale, in the order prescribed by Section XV. of this Act, it shall be the duty of the Collector or other Officer aforesaid to receive every bid which may be made, and to sell each Estate to the highest bidder, and such highest bidder shall be required to deposit immediately, either in Cash, Bank of Bengal Notes or Post Bills, or Government Securities duly endorsed, 25 per cent. on the amount of his bid, and in default of such deposit, the next highest bidder shall be required to maintain his offer, if no higher be again made, and on his failure to do so, the Officer conducting the sale shall be competent, at his discretion, to have recourse to the next highest bidder, or to commence the sale of the Estate *de novo*.

This Section (modified so as to make it more complete) corresponds with Section XVI. of the *original* Draft.

XVIII. That the full amount of purchase money in Cash, Bank of Bengal Notes or Post Bills, or Government Securities duly endorsed, shall be made good by the purchaser before noon of the fifteenth day from that on which the sale of the Estate bought by him took place,* reckoning that day as one of the fifteen, or if the fifteenth day be Sunday or other close holiday, ([16]) then on the first subsequent day which may not be a close holiday; and in default of payment within the prescribed period as aforesaid, the sale shall be null and void, the deposit shall be forfeited to Government, the Estate shall be re-sold and the defaulting purchaser shall forfeit all claim to the Estate, or to any part of the sum for which it may subsequently be sold; and in the event of the proceeds of sale which may be eventually consummated, being less than the

([16]) This mode of expression appears less liable to be mistaken than that used in Section XVI. of the *original* Draft.

* *Quære?* With reference to the words "amount of deposit and balance of purchase money" contained in Section XXXIII. of this Draft, (corresponding with Section XXXI. of the *original* Draft) ought not the words "*whether an appeal be preferred against such sale or not*,"—to be inserted in this place.

price bid by the defaulting purchaser aforesaid, the difference shall be leviable from him by any of the processes authorized for realizing arrears of the Government Revenue; and it shall be so levied and credited to the defaulting Proprietor of the Estate sold.

This Section corresponds with Section XVII. of the *original* Draft.

(17) This necessary limit is not contained in the *original* Draft.

XIX. That re-sales rendered necessary by default of purchasers as above, shall be held on some day, being not less than fifteen nor more than thirty(17) days from the date of such default, to be fixed by the Collector or other Officer aforesaid, and advertized in the manner prescribed by Section VI. of this Act; and the Estate so advertized shall be sold for the recovery of the arrears actually due on the day of the original sale, under the same rules with regard to the payment of the deposit, and of the full purchase money, as hereinbefore proscribed.

This Section corresponds with Section XVIII. of the *original* Draft.

(18) This is not contained in the *original* Draft (Section XVIII.) but it is obviously a wholesome and necessary check against *improper* indulgence and partiality. It is the more required, because in such cases the defaulting Proprietor will lose his lien on the first purchaser, for the differennce of price.

XX. That in the event of a second default, the Collector or other Officer aforesaid, shall proceed a second time in the manner prescribed by Section XIX. of this Act, and so on, as often as need be, until the transaction be rendered complete by the payment of the full purchase money. Provided always that it shall be competent to the Collector, with the sanction of the Commissioner of Revenue, (18) to recall the advertisement and abandon the re-sale, and to proceed anew to sale, at the next periodical sale, for all the balances then due.

This Section corresponds with Section IX. of the *original* Draft.

(19) Of course it is intended that Collectors may be authorized as heretofore to purchase Estates in behalf of Government, at least the words "*shall be competent*" do not bar such a construction.

(20) This is obviously of essential importance; but it is not contained in the *original* Draft.

XXI. That in the event of there being no bidders for an Estate put up for sale in the manner prescribed in Section XVII. of this Act, it shall be competent to the Collector or other Officer as aforesaid, with the sanction of the Commissioner of Revenue, instead of proceeding (19) to advertize such such Estate again for sale, to let it in farm for such period as may be deemed expedient, and at an annual rent not less than the fixed Jummah of the Estate, to any qualified person furnishing good security (20) for the fulfilment of his engagement. And the Proprietor shall not be entitled to re-enter until the expiration of the said period, and the rent of such farm shall be applied after payment of the current Revenue, to the liquidation of the

arrears due at the time of the lease, the surplus being paid to the defaulter. Provided always that nothing in this Section shall be construed to affect the rule contained in Section XIV. Regulation III. of 1794, by which if the Lands of a defaulting Proprietor be put up for sale, and no person shall offer to purchase them, his person and property of every description shall be liable for the balance, to the operation of all the rules in force regarding defaulting Proprietors contained in Regulation XIV. of 1793.

This Section (slightly altered) corresponds with Section XLII. of the *original* Draft.

XXII. That the party whose name or names shall be delivered in to the Collector or other Officer conducting the sale, by the bidder to whom any Estate may be sold under this Act, shall be considered the bonâ fide purchaser or purchasers of such Estate; and shall be registered as such; and any suit to oust such party on the ground of fictitious purchase, shall not be attended to by the Revenue Authorities, (21) and shall be dismissed with costs by any Court of Justice in which it may be instituted.

(21) This is of course implied, though it is not expressed in the *original* Draft.

This Section corresponds with Section XIX. of the *original* Draft.

XXIII. Provided always, that if the Collector or other Officer conducting the sale, either at the time of concluding the sale, or at any subsequent time before the sale may have become final, see reason to believe that the real purchaser is a person on his establishment, or in any way connected as being a servant or nominee of Government with the management of the collections of the Zillah or Pergunnah within which the lot sold may be situated, he shall nevertheless (if the question be raised before the conclusion of the sale) knock the lot down; and in all such cases it shall be his duty to institute an immediate investigation in order to bring the matter to proof, and the result of the proceedings held thereon shall be submitted to the Commissioner who will after investigation, either dismiss the case if he consider it not proved, or if it be proved, submit it for the orders of the Sudder Board of Revenue, who will declare the Mehal to have escheated to Government, or direct it to be otherwise disposed of, as may appear expedient, and whose order shall be final. And the amount of the purchase money shall in cases of escheat be credited (22) to the defaulter in the same manner, as if the sale stood good.

(22) *Quære?* If the purchase money has not been made good by either the nominal or the de facto purchaser,—where and how is it to be obtained?—from the Government Treasury?—or by proceeding against the de facto purchaser? and what if he should not be possessed of any ostensible property?

This Section corresponds with Section XX of the *original* Draft.

XXIV. That if after a sale has become final it shall be proved by a suit decreed in Court, that the Estate has been illegally purchased by a Revenue Officer of Government in any way connected with the management of the Zillah or Pergunnah within which the lot sold may be situated (whether such suit shall have been instituted by the Collector on the part of Government or by the former owner of the Estate sold, or by any other party having an interest in the Estate) in case there be no appeal lodged from the decree, the Court passing the decree, or if there be an appeal the Court passing the final judgment shall forward the decree to the Governor General in Council, who shall be competent to order that the Estate be confiscated, and restored to its original Proprietor.

This Section corresponds with Section XXII of the *original* Draft.

XXV. That all sales held under this Act by a Collector or other Officer aforesaid, shall be absolute without being referred for confirmation to the Commissioner. And no petition of appeal shall be received by the Revenue Authorities against such a sale, unless the same be presented to the Collector or other Officer conducting the sale, for transmission to the Commissioner, within ten days from the day of sale, or unless preferred to the Commissioner within fifteen days from the said date, reckoning the day of sale as one of those days.

This Section is composed of Section XXIII., and the first part of Section XXVI. of the *original* Draft, slightly altered so as to be more explicit.

XXVI. That the Commissioner of Revenue shall be competent to annul any sale of an Estate made under this Act, which shall on appeal duly made be proved to have taken place contrary to any of the Provisions of this Act or other existing law; and on no other ground. And the order of a Commissioner annulling a sale against which an appeal is preferred, or dismissing such appeal, shall be final.

This Section corresponds with the latter part of Section XXVI. of the *original* Draft; with an addition calculated to make it more complete.

XXVII. Provided always that nothing in this Act shall be construed to debar, any person considering himself to be wronged by any act or circumstances connected with any such sale, from seeking his remedy by an action for damages in the Dewanny Adawlut against the public Officer by whose act or by whose laches he considers himself aggrieved. But (23) no sale held under this Act shall be liable to be annulled, set aside, or altered by any Court of Judicature except on the ground of such alleged act or laches being contrary to Law.

(23) It is *most* requisite that the decisions of the Courts should be *strictly* confined to the question of *legality*; and that they should not be allowed to interfere on the ground of *hardship*, &c.; as is too often done. Vide Resolutions of Government on this point dated 26th October, 1827, refer-

red to in page 19 of the Memorandum on the operation of the Sale Law in Bengal, printed *by authority*. London, 3d February, 1835.

This Section corresponds with Section XXVII. of the original Draft.

XXVIII. That it shall be competent to the Local Government, on representation from the Sudder Board of Revenue, or otherwise, in cases of excessive hardship or injustice, at any time within one year from the completion of a sale made under this Act, to annul the sale, and to cause the Estate to be restored to the Proprietor on such conditions as may appear equitable and proper.

This Section comprizes the provisions of Sections XXVIII. and XXIX. of the *original* Draft.

XXIX. That except in the case provided for by Section XXVIII., all sales of which the purchase money has been paid up as prescribed in Section XVI. of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the thirtieth day from the day of sale, reckoning the said day of sale, as the first of the said thirty days. And sales against which an appeal may have been preferred, and the appeal dismissed by the Commissioner shall be final and conclusive at noon (24) of the thirtieth day from the date of the Commissioner's order, reckoning that day as one of the thirty.

(24) For the reason of the change made in the wording here, see my note (26) on the margin of *original* Draft, opposite Section XXVIII.

This Section corresponds with Section XXX. of the *original* Draft.

XXX. That immediately upon a sale becoming final and conclusive, the Collector or other Officer aforesaid shall register the name of the purchaser as Proprietor of the Estate sold, without any charge for the same; and shall notify such transfer by written proclamation affixed in his own Cutcherry, and in those of the Moonsiff, and Darogah of the jurisdiction within which any part of the Estate sold shall be situated and on some conspicuous part of such Estate; and shall apply the purchase money to the liquidation of the arrear due upon the day of sale (or upon the day of the original sale, if the sale finally consummated, be a re-sale) holding the residue, if any, in deposit on account of the late recorded Proprietor or Proprietors' Estate sold, to be paid to their receipt on demand in the manner following; to wit, in shares proportioned to their recorded interest in the Estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of Proprietors upon their joint receipt.

This Section corresponds with Section XXXV. of the *original* Draft.

XXXI. That in the event of further measures than those specified in Section XXX. of this Act, being found necessary for the purpose of putting the purchaser in possession, the Collector or other Officer as aforesaid shall

possess and exercise to that end all the powers possessed and exercised by Courts of Justice for giving possession of Landed Property under decrees of Court. Provided ([25]) that the registration and proclamation prescribed by Section XXX. of this Act, shall be held, to all intents and purposes, sufficient for giving the purchaser legal possession of the Estate sold; and no plea that he has not obtained full and complete possession shall be allowed to bar his liability for the Government Revenue, from the date specified in the following Section.

([25]) The proviso here introduced is *most necessary*; for instances have occurred in which a purchaser has refused to acknowledge having possession; neglected to discharge the Revenue; and contested the subsequent sale of the Estate for default; on the plea that he had not got possession of some lands which either never belonged to the Estate or the right to which was disputed. It would never do to allow the realization of the Government Revenue to remain in abeyance till such a point should be settled to the *satisfaction of the purchaser.*

This Section corresponds with Section XXXII. of the *original* Draft.

XXXII. That the party recorded as the proprietor of an Estate by purchase at a public sale for the recovery of arrears of Revenue shall be answerable for all instalments of the Revenue of Government which may fall due subsequently to ([26]) the day on which the Estate was advertized for sale; provided, however, that in sales of the nature specified in Sections XIX. and XX. of this Act, the purchaser shall be answerable for all instalments of Revenue which may fall due subsequently to the date on which the Estate was originally advertized for sale.

([26]) This expression appears more correct than that used in Section XXXII. of the *original* Draft; and besides it corresponds with that used at the close of the same Section.

This Section (slightly altered) corresponds with Section XXXI. of the *original* Draft.

XXXIII. That the annulment of a sale by a Commissioner shall be publicly notified by the Collector or other Officer as aforesaid, in the same manner as the becoming final and conclusive of sales are required to be notified by Section XXX. of this Act; and the amount of deposit and balance of purchase money shall be forthwith returned to the purchaser with interest thereon from the Public Treasury, at the rate of half ([27]) per cent. per mensem, from the dates on which the aforesaid amounts were paid in, to the

([27]) The old rule, vide Board's Circular Order, dated 6th January 1826, was 12 per cent. The rate proposed here appears more equitable either than the old rate or than that entered in Section XXXI. of the *original* Draft; and besides it is the same as is allowed by the existing Regulations (Section X. Regulation III. of 1828) in cases where the proceedings of a Government Officer are reversed on the ground of illegality.

date on which the order of annulment may reach the Collector's ([28]) Office.

([28]) The propriety of this alteration is explained in my note on the margin of Section XXXI. of the *original* Draft. There is, I believe, a rule of the Accountant General's Office, by which if a Collector cannot pay a demand when due, he is authorized to allow interest. This is sufficient to ensure purchasers against loss by delay of payment after the order reaches the Collector.

Section XXXIV. of this Draft corresponds with Section XXXIII. of the *original* Draft.

XXXIV. That no person shall be entitled to contest the legality of a sale after having received any portion of the purchase money; and that no part of the surplus proceeds of the sale of an Estate shall be liable for the private debts of the late Proprietor, whilst a suit to set aside such sale as illegal is pending in any Court of Justice.

This Section corresponds with Section XXXIV. of the *original* Draft.

XXXV. That in the event of any sale being reversed by a final decree of any Court of Justice, under the provisions of Section XXVII. of ([29]) this Act, the purchase money shall be refunded to the purchaser by Government, together with interest at the rate of six ([30]) per cent. per annum. But if an arrear was due upon the Estate on the date of the advertisement for sale, the Estate shall be held under attachment by the Collector, and shall not be restored to the proprietor until that arrear is paid.

([29]) For the necessity of this restriction see note ([23]) on margin of Section XXVII. of this Draft.

([30]) The reason of this alteration is given above in note ([26])

This Section corresponds with Section XXXVI. of the *original* Draft.

XXXVI. That the purchaser of an Estate sold under this Act, for the recovery of arrears due from itself, in the permanently settled Districts of Bengal, Behar, and Orissa, shall be entitled to enhance, in the manner prescribed in the Regulations, the rent of all under-tenures in the said Estate, with the following exceptions.

First. Tenures which were held as Istemraree or Mocurreree, at a fixed rent, more than 12 years before the permanent Settlement.

Secondly. Tenures existing at the time of the Decennial Settlement, which have not been, or may not be, proved to be liable to increase of Assessment, on the grounds stated in Section LI. Regulation VIII. of 1793.

Thirdly. Lands held by Khoodkasht or Kudeemee Ryots, having rights of occupancy at fixed rates.

Fourthly. Lands held under *bonâ fide* leases, temporary or perpetual, for the erection of dwelling houses, or manufactories, and being so used, or for gardens, tanks, canals, or like purposes.

Fifthly. Farms granted in good faith by a former Proprietor, for terms not exceeding twenty years, under written and duly registered leases, stipulating for the payment of an annual rent not less than the average net rent realized from Lands of the same description in the vicinity during the three years immediately preceding the year in which the lease as aforesaid was granted. Provided ([21]) that the above noted exceptions shall continue in force and effect only so long as the stipulated rent shall be duly paid.

([21]) This proviso is important, and it corresponds with a similar one contained in Section XXXVIII.

Provided also, that nothing in this Section contained shall be held to authorize any such purchaser to enhance the rent of any Talookdar, Ryot, or Cultivator, beyond what the late Proprietor would have been entitled to demand from the same according to the established usages and rates of the Pergunnah or District, if no engagement had existed between them.

This Section corresponds with Section XXXVII. of the *original* Draft.

XXXVII. That in the event of any purchaser at public sale as aforesaid proceeding against any tenant claiming to belong to one of the abovementioned classes, on the plea that the tenant does not really so belong, the burthen of proof that he does belong to an exempted class shall be on the tenant sued.

This Section corresponds with Section XXXVIII. of the *original Draft.*

XXXVIII. That the purchaser of an Estate sold under this Act for the recovery of arrears due from itself, in Districts other than those mentioned in the two last preceding Sections, shall be competent to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or Assignees of the original engager, as well as all agreements with ryots or the like settled or credited by the first engager or his representatives, subsequently to the settlement, as well as all tenures which the first engager may under the conditions of his settlement, have been competent to set aside, alter or renew, saving always and except *bonâ fide* leases of ground for the erection of dwelling houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water-courses, or the like purposes, which leases or

engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing in this Act contained shall be construed to entitle any purchaser of Land at a public sale to disturb the possession of any village Zemindar, Putteedar, Mofussil Talookdar, or other person having a hereditary transferable property in the land, or in the rents thereof, not being one of the Proprietors' party to the engagement of settlement, or his representative; nor to eject a Khoodkhasht, Kudeemee ryot, or resident and hereditary cultivator having a prescriptive right of occupancy. Nor to demand a higher rate of rent from an under-tenant of either of the above descriptions, than was receivable by the former Malgoozar, saving and except, in cases in which such under-tenants may have held their lands under engagements stipulating for a lower rate of rent than would have been justly demandable for the Land, in consequence of abatements having been granted by the former Malgoozars from the old established rates by special favour, or for a consideration, or the like, or in cases in which it may be proved that according to the custom of the Pergunnah, Mowzah, or other local division, such under-tenants are liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government.

This Section corresponds with Section XXXIX. of the *original* Draft.

XXXIX. That the claims of purchasers, whether in regard to the enhancement of rent, or ejectment from tenure under the provisions of Sections XXXVI. and XXXVIII. of this Act, shall be adjudicated, only by the Civil Courts. Provided that nothing in this Section contained shall prevent purchasers from suing their under-tenants for arrears of rent by summary suit in the usual manner.

This Section corresponds verbatim with Section XL. of the *original* Draft.

XL. That none of the powers and privileges conferred upon purchasers at public sales for arrears of Revenue by Section XXXVI. or XXXVIII. of this Act, shall be enjoyed or exercised by any person purchasing in his own name, or in the name of another, an Estate of which he was a recorded or unrecorded Proprietor, either absolute or in coparceny, at the time of sale for arrears as aforesaid, and such a purchaser shall have no right that was not possessed by the defaulter at the time of sale. And further, (32) in the event of its being established by a final decree of Court, that the purchase at such public sale of an Estate was made by such person, either in his own

(32) This is a very important addition to the provisions of the *original* Draft. The reasons which render its introduction

necessary are given in a note C, at the end of *this* Draft.

name, or in the name of another, with the intent unjustly to deprive any sharer or claimant of his lawful rights in the said Estate, or to defraud his creditors, then it shall be competent for the said Court to direct that the aggrieved party shall be restored to his rights and liens on the Estate, in the same manner as if the sale had not taken place; any thing to the contrary in Sections XXII. and XXVII. of this Act notwithstanding. Provided always, that no costs, damages or refund shall in such cases be awarded against any public Officer or Government, except on the ground of illegality of procedure.

This Section corresponds with Section XLI. of the *original* Draft.

XLI. That arrears of rent which at the dates of sale may be due to the defaulter from his tenants, shall be recoverable by him by suit in Court in the prescribed form.

This Section corresponds with, and contains the provisions of Sections XIII. and XIV. of the *original* Draft.

XLII. That any receipt for the payment of Revenue due from any Estate which may be granted under the provisions of Section V. of this Act to any person not being a recorded proprietor of the same shall be received in all Courts of Justice as evidence of such payment, and in the event of the holder of such receipt substantiating in any such Court a lien by way of mortgage or otherwise upon the Estate on account of which such payment was made, the amount acknowledged in such receipt shall be held by the said Court to be an addition to the principal sum of such lien, as if it had originally formed part of the same, and shall bear interest from the date of payment as aforesaid at the rate borne by the principal sum. And a receipt of the nature aforesaid shall be held by all Courts of Justice to be a full and complete acquittance *pro tanto* of rent which may be due from the holder of such receipt to the Proprietor or Proprietors of the Estate, to the credit of which the payment in question may have been made, in the manner described in Section V. of this Act, on account of lands situated within such Estate.

The provisions of Section XLVI. of the *original* Draft are given here, but they have been considerably altered, so as to embrace every possible case to which the principle can apply.

XLIII. That when a claim to the proprietary right in any Mehal paying Revenue to Government may be depending in any Court of Civil Judicature, whether as an original suit, or as an appeal, or when a decree passed for the proprietary right in any such Mehal may be under execution, then if the party in possession of such Mehal neglect to discharge the Government Revenue demandable therefrom, and the Mehal be in consequence advertized for sale as directed in Secton VI. of this Act, it shall be competent to the other party in the case to make application to the Court to be put in possession of the contested Mehal;

and the Court on receiving such application shall (subject in appeal cases to the rules for taking security contained in Clause 4, Section XI. Regulation XIII. of 1808) order the Collector or other Officer holding the sale, on receiving from the said applicant the amount of arrear due, to exempt the Mehal from sale and to put the said applicant in possession thereof. Provided (33) always that such order be so issued as to reach the Collector or other Officer aforesaid, before the Mehal is put up for sale, and that the applicant in whose favor the order is passed tender to the said Officer the amount of the advertized arrears due from the Mehal before the sale takes place.

(33) This proviso is obviously most necessary in order to prevent confusion and perplexity.

This and the two next Sections are not in the *original* Draft; but they are obviously required in order to render the Act complete. The provisions of Regulation XIX. of 1814. are not sufficiently explicit to meet the exigencies of the *new* law of procedure as prescribed in the present Act; as will be seen from the modifications here proposed.

XLIV. That whenever the partition of any Estate into two or more distinct Estates shall have been ordered to be made, whether on direct application of the parties to the Collector or under precept from a Court of Civil Judicature, the Collector or other Officer superintending the collections of such Estate shall immediately ascertain and record the amount of arrear of Government Revenue due at that time from such Estate. And in the event of the whole of such arrear not being discharged on or by the next occurring date fixed according to Section IV. of this Act, for the payment of the public Revenue; the Collector or other Officer aforesaid shall proceed to advertize the entire undivided Estate for sale in the same manner as if no order for partition had been made.

Vide last remark.

XLV. That as regards any joint undivided Estate held in common tenancy, (viz. where all the sharers have a common right and interest in the whole of the Estate) of which a partition shall have been ordered; if the whole arrear of Government Revenue due therefrom, up to the passing of the order to make the partition, shall have been discharged by the date mentioned in the last preceding Section of this Act; then each share of such Estate shall be held responsible only for its proportion of the Government Revenue; and in the event of an arrear subsequently accruing against such Estate, while under partition, only the share or shares in arrear shall be advertised and sold for its recovery; and not the share or shares the proportion of the Government Revenue due from which may have been paid up. And in such cases the partition shall go on and be completed for the benefit of the purchaser; who will in every respect succeed to the rights of the defaulting proprietors whose share or shares may be sold.

Vide supra, note on Section XLIV.

XLVI. That as regards—Estates consisting of distinct Mehals, (viz. where the sharers have separate titles to specific villages or lands forming part of an Estate held under one general assessment) of which a partition shall have been ordered; if the whole arrear on account of Government Revenue due at the time the partition was ordered, be discharged by the date mentioned in Section XLIV. of this Act; then in the event of an arrear subsequently accruing against such Estate, it shall be in the option of any Proprietor of any distinct Mehal or portion of the said Estate to obtain the exemption thereof from sale, in the manner provided by Clause 2, Section 34, Regulation XIX. of 1814; but in that case the distinct Mehal or portion shall remain annexed to the original Estate, as before, until the division thereof shall have been finally adjusted and ratified.

This Section corresponds with Section XLV. of the *original* Draft.

XLVII. That when the Estate of a defaulter or his surety, not being the Estate on account of which the arrear accrued, may be sold for the recovery of an arrear of Revenue, then whether the said Estate consist of Malgoozaree or Lakheraj land, the purchaser shall be held to have acquired only the rights, interests and title possessed by the said defaulter or surety, in like manner as if the land had been sold by private sale, or under a decree of Court in liquidation of a private debt; and this shall be duly notified to intending purchasers in the advertisement and at the time (34) of sale. But when an Estate may be sold for the recovery of any of the Revenue assessed upon it, the act of sale shall be held to transfer to the purchaser all the property and privileges which the engaging party possessed and exercised at the time of settlement, free from any accidents or incumbrances that may subsequently have been imposed, or have supervened thereupon, such as sale, gift, or other transfer, mortgage, marriage settlement, or other assignment or the like; and, in such cases, the property and privileges possessed and exercised as aforesaid, being perpetually hypothecated to Government for the Revenue assessed on the Land, no claim of right formed on any act of the original engager or his representative, or on any plea impeaching the title by which the said engager may have held, shall be allowed to impugn the right of the Revenue Authorities to make the sale, or to bar or affect the title and interest conveyed to the purchaser by the sale.

(34) This provision is obviously equitable and necessary.

This Section corresponds verbatim with Section XXXVIII. Regulation XI. of

XLVIII. That Government is not, and shall not be held liable for any error or irregularity, which may have

1822, which having been included in the general repeal, requires to be re-enacted; otherwise this most important and wholesome provision will be no longer in force, and the Government will be held liable for the errors of Courts of Justice whenever Revenue Officers are employed in the execution of decrees. Even now that these provisions are in force, (such is the ignorance of the Courts) Government are continually made to suffer improperly;—much more then will they be so, if the law be not re-enacted.

occurred, or shall occur in any order, proceeding, or decree of any Court of Judicature, whether a Revenue or other Officer of Government may or may not have been, or shall or shall not be employed, in giving effect to the order, proceeding, or decree deemed to be erroneous or irregular. Nor shall any Officer of Government be held liable for any thing done or suffered in conformity to an order, proceeding, or decree of a Court as aforesaid; and if any person or persons shall sue Government or any Officer of Government for any thing done or suffered under an order, proceeding, or decree of a Court as aforesaid, such person or persons shall be nonsuited with costs. The same principle is and shall be held applicable to all orders, proceedings, or decrees made, held, or passed by any public Officer, in virtue of powers vested in him for the Judicial cognizance of any pleas, suits, complaints, or informations whatsoever, unless otherwise specially provided.

This Section (slightly modified,) corresponds with Section XLIII. of the *original* Draft.

XLIX. That any Officer holding a sale under the provisions of this Act shall be competent to punish any contempt committed in his presence, at the time of holding such sale, by fine not exceeding Co's Rs. 200, commutable if not paid to imprisonment in the Civil jail for a period not exceeding one month; and the Magistrate, to whom such an offender may be sent by the Officer aforesaid, shall carry his sentence into effect. Provided that an appeal from any order passed under this Section shall be to the Superior Revenue Authorities, in the usual course.

This Section corresponds with Section XLIV. of the *original* Draft.

L. That a default to make good a bid by making the deposit required by Section XVII. of this Act, shall be held to be contempt within the meaning of the preceding Section.

This Section corresponds verbatim with Section XLVII. of the *original* Draft.

LI. That the operation of this Act shall be confined to the Provinces of Bengal, Behar, Orissa, and Benares, and to the Ceded and Conquered Provinces under the Government of the Presidencies of Fort William in Bengal, and nothing in this Act contained shall affect Land in the Town of Calcutta, or the Settlements of Singapoor, Penang or Malacca.

NOTES BY MR. G. F. BROWN.

Note A on Section IV. of this Draft.

It appears from the printed Draft to be the intention of Government that the notification of the dates fixed by the Sudder Board for the payment of Revenue shall not be published on *every Estate*; though the advertisement of sale is to be so. This point surely requires re-consideration, it being far more necessary that every Malgoozar should know beforehand what the law requires of him, than that he should be told when too late that he has transgressed the law. It is notorious that as regards the generality of proprietors, (particularly those of small Estates,) the publication of Ishtehars at the Thannah or Moonsiff's Cutcherry is not a sufficient notice; and that they frequently never hear of the circumstance till the time has gone by. The consequence of the present Act therefore, unless altered in this particular, will be that at the first sale under this Act an immense number of Estates will be sold from sheer want of information, as well as from inadvertence on the part of the proprietors. Still however, if any alteration be made, care must be taken to word the clause so that any *one* instance of omission may not invalidate the sale of *all other* Estates; however much it may that of the particular instance in which notification may inadvertently not have been made. Perhaps it would answer the purpose to add, after the words "at every Thannah Station," the words "and generally at the Malgoozaree Cutcherry, or some other conspicuous place of all permanently settled Estates throughout the district."

Note B on Section VI. of this Draft.

Possibly the words "*all* Estates, &c." may be construed to include Estates under *temporary* settlement. This would be an awkward mistake; but its commission is by no means improbable, as even under the present rules (by which no temporarily settled Estate can be sold without the sanction of Government previously obtained,) instances have occurred to my knowledge more than once, of the *permanent* right having been sold* of Estates *temporarily* settled; and that too at a *fixed* Jummah, though the annual demand at the time of settlement confessedly required *revision*. In one case a Government purchased Estate which had been leased again to the old Maliks for 10 years, was actually sold again (without leave) for fresh arrears, and again purchased by the Collector in behalf of Government! To prevent such accidents, which of course under the new Act, Commissioners will not be able to check, it would perhaps be advisable to provide (as in the preamble of Regulation VII. of 1830) that the rules laid down are to apply to those Estates only for which a permanent settlement has been or shall hereafter be concluded; and that no Estate, the then existing engagement for which may be of a temporary nature, shall be advertized for sale without the sanction of the Sudder Board of Revenue for that purpose being previously obtained.

* Without previous sanction.

Note C on Section XL. of this Draft.

An incalculable amount of injury and injustice is inflicted by clever unprincipled proprietors on their honest confiding co-parceners, as also on their creditors, by their allowing their Estates to fall into arrear and then purchasing them in fictitious names. Instances are continually brought to my notice in which one sharer A. has sent the whole of the arrear due, to the Collector before the sale, by the hand of another sharer B. who at the instigation of the devil or some other rogue, has coolly withheld the money and bought the Estate in the fictitious name of C. Other instances occur in which a Zemindar being in debt and fearing the sale of his lands in execution of decree, gets his

property brought to the hammer for arrears of Government Revenue, and then buys it back in the name of some kind cousin, as ostensible purchaser, in order to cheat his creditors. It is to correct these crying evils that I have introduced the latter part of Section XL. and I most earnestly hope it will meet with the approval of the legislature; for otherwise rogues and rascals will have a glorious and most unfair advantage over honest men;—while good simple hearted people will be inevitably ruined. I have used the words "*unjustly* deprive," because in some cases it would be quite fair for one sharer to oust another sharer of his rights, by buying the whole property at auction; such for instance as when the latter has for years pocketted the rents without paying a fraction of the Revenue:—a case which is by no means uncommon in these parts.

Note D.

No Provision has been made in this Draft (or in the one read in Council on the 14th October) for the non-interference of *Judicial* Sales with *Revenue* Sales, and vice versa. Suppose a Judicial Sale is held 10 days before, or 10 days after one of the dates fixed for the payment of the Government Revenue;—what perplexity must ensue! At least there should be a Circular Order on the subject, regulating the course to be pursued in such cases; so as to prevent mistakes. Or perhaps it would be better to frame a new Act for the conduct of Judicial Sales:—this appears called for (among others) on the following grounds:—

1st.—To prevent perplexities; thus—An Estate is sold for arrears of Government Revenue on the 20th of May; the purchaser defaults, and the Estate is advertized for re-sale on the 10th of June. But in the mean time, the same property is brought to the hammer and sold for a *Judicial* decree on the 1st of June; for a less sum than at the first sale; and the first purchaser refuses to make good the difference, because the re-sale on account of Revenue (advertized for the 10th of June, but which has been frustrated by the intermediate sale for decree of Court) did not take place. This is a real case.

2dly.—The present Act repeals, among other Provisions, Section XXXIV. Regulation XI. of 1822, and Clause 2, Section VII. Regulation VII of 1830; both of which require to be re-enacted.

3dly.—The Law of Procedure as laid down in Regulation XLV. of 1793, and Regulation VII. of 1825, is not sufficiently clear and explicit; especially in cases where *parts* of Estates are ordered to be sold in satisfaction of decrees.

4thly. No provision exists to define with whom the power lies of *confirming* Judicial sales.

5thly. The Courts sometimes interfere in a most vexatious manner in regard to confirmation of sales. For instance, ordering the property to be re-sold, and providing that in case it did not then fetch a higher price, the first purchaser was to be held to his bargain! Or that pending an enquiry into the validity of the objections urged against a sale, (which enquiry I have known to last for more than twelve months,) neither the purchaser nor the former proprietor were to have possession or interfere! The Government Revenue being in jeopardy all the time.

"*Zeadeh hud i udub.*"

For convenience of reference, the following list is given of the corresponding Sections of this *New* Draft and of the *Original* Draft, read in Council on the 14th October last.

This Draft.	*Origl.* Draft.	*This* Draft.	*Origl.* Draft.	*This* Draft.	*Origl.* Draft.
Sec. 1 =	Sec. 1	Sec. 18 =	Sec. 16	Sec. 35 =	Sec. 34
2 =	New Section.	19 =	17	36 =	36
3 =	2	20 =	18	37 =	37
4 =	3	21 =	9	38 =	38
5 =	12 and first part of 4.	22 =	42	39 =	39
6 =	last part of 4.	23 =	19	40 =	40
7 =	6	24 =	20	41 =	41
8 =	21	25 =	22	42 =	13 & 14
9 =	5	26 =	23 & 26	43 }	New provisions.
10 =	10	27 =	26	44 }	
11 =	11	28 =	27	45 }	
12 =	24	29 =	28 & 29	47 =	45
13 =	25	30 =	30	48	New provision.
14 =	New Section.	31 =	35	49 =	43
15 =	8	32 =	32	50 =	44
16 =	7	33 =	31	51 =	47
17 =	15	34 =	33		

G. F. BROWN.

No. of the Sections of the *new* Draft.	Corresponding No. of the Sections of the *original* Draft.	*Abstract* of the several Sections of the *new* Draft of the Sale Law.
1 =	1	Preamble. From what date the Act is to be in force. Former Regulations repealed.
2	—	What Officers empowered to hold sales under this Act.
3 =	2	Government demand restricted to the principal or Jumma; and all levy of interest and penalty prohibited.
		Rules of Procedure before *Sale.*
4 =	3	The Sudder Board at Calcutta shall determine the fixed dates on which the Revenue is to be paid up. Notice of such dates to be published in the Gazette, and in the several offices in the interior.
5 =	12 and first part of 4.	Collectors to receive payment of Revenue up to what period and from whom; and to grant receipts. But prohibited from receiving any Revenue after such period from Estates in arrear. Exception.
6	Last part of 4.	Collectors to issue advertisements immediately after the fixed dates for sale of all Estates in arrear. What particulars to be specified in such advertisements, and where they are to be affixed.
7	6	Proviso in certain cases.
8	21	Proclamation to be appended to advertisement forbidding under-tenants to pay rent to defaulting Proprietors:—till what period.
9	5	Rules regarding the issue of advertisements in Districts not permanently settled, and in the Province of Benares.
10 =	10	Exemptions from sale of Estates under Court of Wards, and till the end of the year of Estates attached by order of Civil Courts.
11 =	11	Sudder Board and Local Commissioner of Revenue competent to grant exemptions from sale. Proviso.
12 =	24	Claims to abatement or remission of Revenue, and private demands not to bar sales.
13 =	25	Claims on account of deposits not to bar a sale, nor render it illegal except under certain circumstances.
		Rules of Procedure at Sales.
14		Sales where to be held.
15 =	8	Estates to be put up and sold without reserve, and in regular order as advertized.
16 =	7	What notices required in case of postponement of sale.
17 =	15	To whom Estates are to be sold, and what deposit to be made by purchasers. If deposit be not made immediately, Collector how to proceed.
		Rules of Procedure after Sales.
18 =	16	The full amount of purchase money when required to be paid, and if not paid, Collector how to proceed.

No. of the Sections of the *new* Draft.		Corresponding No. of the Sections of the *original* Draft.	*Abstract* of the several Sections of the *new* Draft of the Sale Law.
19	=	17	Re-sale of Estates in consequence of default of first purchaser.
20	=	18	In event of a second default, Collector how to proceed.
21	=	9	In event of their being no bidders, a Collector how to proceed.
22	=	42	Who is to be considered the purchaser of an Estate and charges of fictitious purchase how to be treated.
23	=	19	Proviso in cases when, before the sales becomes final, ground for believing that the real purchaser is a Revenue Officer. How such cases to be dealt with.
24	=	20	Proviso in cases when after the sale has become final it may be proved by a suit in Court that the real purchaser was a Revenue Officer.
25	=	22	All sales held under this Act shall be absolute without confirmation. No appeal against such sales to be received unless preferred within a limited period.
26	=	23 and 1st part of 26.	Commissioners may annul sales appealed against, if conducted contrary to law; but not otherwise Commissioners' order to be final.
27	=	26	Provided that nothing shall debar any person from seeking redress in the Civil Court. But Court not to interfere except on ground of illegality.
28	=	27	Local Government competent to annul sales in cases of special hardship, if represented within one year from completion of such sale.
			Rules of Procedure after completion of Sale.
29	=	28 and 29	At what period sales are to be considered final and conclusive.
30	=	30	Collector immediately on sale becoming final to register name of purchaser, without charge, and publicly to notify the same. Purchase money how to be disposed of.
31	=	35	What process to be observed in the event of further measures being necessary for putting purchaser into possession.
32	=	32	From what date a purchaser shall be answerable for the Government Revenue.
33	=	31	Manner in which the annulment of a sale shall be notified, and rule for returning purchase money with interest to the purchaser.
34	=	33	No person who has received any part of purchase money shall be entitled to contest legality of sale.
35	=	34	In event of sale being reserved by decree of Court, the purchase money with interest to be refunded.
36	=	36	Auction purchasers in permanently settled districts entitled to enhance rents of under-tenants, under restrictions with regard to certain classes.

No. of the Sections of the *new* Draft.	Corresponding No. of the Sections of the *original* Draft.	*Abstract* of the several Sections of the *new* Draft of the Sale Law.
37 =	37	In event of any tenant claiming exemption, the burthen of proof shall be on such tenant.
38 =	38	In districts other than those before mentioned, auction purchaser entitled to enhance rents of tenants under certain restrictions.
39 =	39	Claims of purchasers to enhanced rent to be adjudicated by Civil Courts. Proviso.
40 =	40	Powers and privileges conferred on auction purchasers by Sections XXXVI. and XXXVIII. not to be enjoyed by proprietors purchasing either in their own name or in that of another. If a proprietor so purchase with a view to defraud other sharers or claimants, it shall be competent for Courts to restore the aggrieved party to his rights and liens. Proviso.
41 =	41	Arrears of rent due to defaulter recoverable by suit in Court.
42 =	13 and 14	Receipts granted under Section V. to a person, not a recorded proprietor, to be received as evidence of payment of arrear and held to be an addition to any principal lien on the Estate. And such receipts to be held complete acquittance of so much rent due from holder of receipt to proprietor.
43 =	46	Persons claiming property in an Estate advertized for sale, on what conditions to get possession.
44 =		Rules to be observed on joint Estates being ordered for partition.
45 =		Rules respecting balances accruing during partition of joint Estate into shares.
46 =		Rules respecting balances accruing during partition of joint Estates into separate Mehals.
47 =	45	Declaration of right conveyed by sale. 1st. Where an Estate is sold for arrears accruing on another Mehal. 2d. Where an Estate is sold for arrears of Revenue assessed on itself.
48 =		Government not liable for errors of Courts of Justice; whether Revenue Officers be or be not employed in executing the Court's order.
49 =	43	Collector to have power to punish for contempt.
50 =	44	A default in making good deposit, held to be a contempt.
51 =	47	Specification of jurisdiction over which the operation of this Act is to extend.

FINIS.

My dear Colonel

The first part of the arrangement has agreed to me - tho' I do not greatly approve it. It tends to the chances of unsold goods which is a bad sale - which is a bad sale. It does not good.

b. The last clause is new to me. It is an unnecessary addition. I should dispute it.

c. This is new to me. I think it unnecessary. The wording is very vague: but its apparent meaning would cut off a sale one month ~~late~~ beyond the time at which under my draft it might have occurred. And this is objectionable. On the head side my printed paper -

This seems unobjection-
able — but as it stands it
is not quite understood —

I would think the Place should
be notified in the annual ad-
vertisement & not afterwards
changed —

This last proviso is unnecessary
as it has been already provided for
in Sec 8 — But this is of not
much consequence —

This observation of Lane precedes
the last — & applies to the
allegation — as not going far enough
Vide my remarks in the
printed paper & those of the
Landholders Society —

This is a dubious point — It
might allow the Commissioners to
award damages

After the words manufacturing
was and legislature. There
are strong not words again in
certain other clauses clearly
necessary to suppose
a man to get a perpetual lease
in a surprising ground a Mayfair
street instead of using words such, to
make a perpetual lease of it. The
words here should be inserted
in a fit place.

I object entirely to the words
"or other purposes" clearly beneficial
to the estate & creating new assets
thereto. They are vague & they
might be made to include almost
anything. Now the true
principle is, to allow no perpetual
leases except in special cases of
great necessity.

I object to the insertion of the

wood mine - & the landlord
never to benefit by an increase
This will
stimulate

In this allegation I think
it is intended
the chief merit of
bly desire

House bill with section
Mr Vilas
punitive later -

There are
Hon. Gen Lindley
returns they to have done

Memorandum.

To J. P. GRANT, Esq.

OFFICIATING SECRETARY TO THE GOVERNMENT OF INDIA,

LEGISLATIVE DEPARTMENT.

Sir,

It is with feelings of no ordinary gratification, that the Landholders' Society has perused the Draft of a proposed act, modifying the existing Regulations for the recovery of the arrears of Revenue by sales of land. The motive for this enactment as set forth in the first section, viz., the benefit of the agricultural community, is no less worthy of a paternal and benevolent Government, than it is calculated to call forth from all classes of its subjects, the warmest sentiments of gratitude. The means, adopted for attaining this object, are equally judicious. Nothing, for instance, could have afforded a more salutary and welcome relief to the Sudder Maulgoozars, than the discontinuance of the levy of interest or penalty on the arrears of Revenue which so heavily bear upon the proprietors of land, and the relief from which, at this period, cannot but be considered by them a great boon.

2nd. But as the Draft under reference, contains many points of the highest importance, both to the Sudder Maulgoozars and to the Ryots, the Landholder's Society as representing a large section of the landed interest in the Permanently Settled Provinces, begs to submit observations on such provisions of the proposed act, as seem to require the further consideration of Government. For this purpose, the different sections of the act will be quoted on the margin, and the remarks thereupon submitted *seriatim.*

3rd. Sections I. and II., quoted on the margin, we have already stated not only meet the full concurrence of the Landholders' Society, but also lay the agricultural community under a heavy debt of gratitude.

Act No. —— of 1839.

An Act for amending the Bengal Code in regard to Sales of Land for Arrears of Revenue.

I. Whereas it is expedient, with a view to the benefit of the Agricultural Community, to discontinue the levy of interest and penalty upon arrears of Revenue; to reduce the number of periodical sales of Land; to provide for the absolute sales, after due notification, of any Mehal which may not have punctually paid up the whole of the current Revenue on appointed days, in order that sufficient publicity and certainty may be given to such sales; and otherwise to amend the Laws for the realization of the public demand: It is hereby enacted that from the day of Regulation XI. of 1822 and Regulation VII of 1830 of the Bengal Code, except in so far as they rescind other Regulations or parts of Regulations, are repealed.

II. And it is hereby enacted, that there shall be no demand of interest or penalty upon any arrear of Revenue which shall fall due after the date specified in Section I of this Act.

4th. In section III., vide margin, discretionary power is given to the Sudder Board to fix a period for the payment of Revenue in each District. This has no doubt been done, to enable the Board to exercise a wholesome discretion, in fixing the period of public demand with reference to a due consideration of the seasons of the year, and other local circumstances in each district, so as to provide for the general convenience.

III. And it is hereby enacted, that upon the promulgation of this Act the Sudder Board of Revenue at Calcutta shall determine upon what dates all arrears of current Revenue shall be paid up in each permanently settled District in the Provinces of Bengal, Behar, and Orissa, in default of which payment the Estates in arrear in those Districts, except as therein after provided, shall absolutely be sold at Public Auction to the highest bidder. And the said Board shall give notice of the dates so fixed in the *Calcutta Gazette*, and shall direct corresponding publication to be made, as far as regards each District, in the language of that District, in the Office of the Collector, or Deputy Collector, or other Officer duly authorised to hold sales under this Act, in the Courts of the Judge, Magistrate, Principal Sudder Ameens, Sudder Ameens and Moonsiffs, and at every Thanna Station of that District; and the dates so fixed shall not be changed until the same be changed by the said Board by advertisements and notifications in the manner above described, such advertisements and notifications to be issued, on every occasion after the first above provided for, before the close of the year preceding that in which the new date or dates are to take effect.

5th.

5th. But, adverting to the indulgence that has been allowed to the proprietors of the settled Provinces, for a period of nearly fifty years, of paying in the Revenue, not only on the day preceding the sale, but even at the very time of putting up the Estate to Auction, and with reference to the dilatory habits of landed proprietors generally, we beg leave to observe that the change, contemplated in this section, appears to be rather sudden, and on its first introduction, may deprive many persons of their property, if some further provision be not made to impress on the defaulters every time their estates are in arrear, that their Zemindarry will be absolutely sold if the balance be not paid within a certain day. With this view, we beg to propose that a precautionary notice of 15 days, prior to the day fixed by the Sudder Board for closing the receipt of payment, be republished in the *Calcutta Gazette*, the Collectors', the Judges', and the local Moonsiffs' *Cutcharies*. This provision, without in any way interfering with the object of the law, will in a great measure prevent sales, which would otherwise have taken place merely for want of due vigilance on the part of the landholders.

6th. On Section IV. V. and VI. the Landholders' Society has no remark to submit, beyond suggesting that the notification mentioned in them, should also be published in the *Calcutta Gazette*, 15 days prior to the day of sale,—a measure which by giving greater publicity to the intended sale would invite purchasers, other than those residing in the district, and thus enhance the value of the property. The benefit resulting from this, would be decidedly felt by the defaulter, who, if from circumstances which he could not controul, has been compelled to the extreme measure of submitting to the sale of his patrimony, is certainly entitled to such an indulgence.

IV. And it is hereby enacted that in Districts for which the dates of payment shall be notified in the manner prescribed in Section III. of this Act no payment on account of the Revenue of any Estate in arrear shall be received after the dates so notified, except as provided in Section XI of this Act. And the Collector, Deputy Collector, or other Officer as aforesaid, in every such district, shall, as soon as practicable after the said dates, issue notifications in the language of his District to be affixed in his own Office, in the Court of the Judge within whose jurisdiction the estate advertised lies, in the Courts of the Principal Sudder Ameens, Sudder Ameens and Moonsiff's and at every Thanna Station in his District, and in the Malgoozaree Cutcherry of each Estate advertised, or in some conspicuous place thereon, in which notification shall be specified the Estate or Estates which will be absolutely sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be more than one month from the date specified in Section III. of this Act nor less than fifteen days from the date of affixing the notification in his own office.

V. And it is hereby enacted, that in Districts not permanently settled, and in the Province of Benares, no Estate, and no rights, interests, or title in an Estate, shall be advertised for sale for the recovery of arrears of Revenue without the special sanction previously obtained of the Sudder Board of Revenue within whose jurisdiction the same may be; but when an advertisement of sale in such Districts or in the said Province shall be so sanctioned, the Estate or Estates whereof the sale has been so sanctioned shall be advertised for absolute sale in the manner prescribed in Section IV of this Act; and all the provisions of this Act, so far as they are applicable, shall apply to Estates so advertised.

VI. Provided always, and it is hereby enacted, that no Estate shall be sold for the recovery of Arrears or Demands of the description mentioned below, otherwise than after a notification in the language of the District, specifying the matters and amount of the arrear or demand, shall have been affixed, for a period not less than fifteen days before the day of sale, in the office of the Collector, Deputy Collector, or other officer as aforesaid by whom the sale is intended to be made, in the Court of the Judge within whose jurisdiction the Land advertised lies; in the Courts of all the Principal Sudder Ameens, Sudder Ameens and Moonsiffs in the District, and at the Police Thannah of the division in which the Estate to which the notice relates, or part of it is situated, the same to be certified by the receipt of the officer at whose office such publication may have been made; and also at the Cutcherry of the Malgoozar of the Estate, or at some conspicuous place upon the Estate, the same to be certified by the Peon or other person employed for the purpose.

7th. On Sections VII. and VIII. the Society has no remarks to offer.

VII. And it is hereby enacted, that in case the Collector, Deputy Collector or other officer as aforesaid, shall be unable from sickness, from the occurrence of a holiday, or from any other cause to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it, he be unable from the like cause, to proceed with it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue and announcing the adjournment by a written proclamation stuck up in his Cutcherry, and so on, from day to day, until he shall be able to commence upon, or to proceed with, the sale, but with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

VIII. And it is hereby enacted, that on the day of sale fixed according to Section IV. of this Act, sales under this Act shall proceed in regular order, the Estate to be sold bearing the lowest number on the Towjee or rent roll of the District being put up first, and so on, in regular sequence:

And

Memorandum.

Memorandum.

And it shall not be lawful for the Collector or other officer as aforesaid to put up any Estate out of its regular order by number.

8th. The Landholders' Society has studied the provisions of Section IX. of the proposed act with much attention, and the following observations thereon are respectfully submitted to the Government.

IX. And it is hereby enacted, that in the event of there being no bidders for an Estate advertised for sale as aforesaid it shall be competent to the Collector or other Officer as aforesaid, with the sanction of the Commissioner of Revenue, instead of proceeding to advertise such Estate again for sale, to let such Estate in farm, upon tender advertised for in the usual mode, at an annual rent not less than the fixed jumma, and for such period as may be deemed expedient, the Proprietor not being entitled to re-enter until the expiration of the said period, and the rent of such farm shall be applied, after payment of the current Revenue, to the liquidation of the arrears due at the time of the lease, the surplus being paid to the defaulter. Provided always that nothing in this Section shall be construed to affect the rule contained in Section 14 Regulation III. of 1794 by which if the Lands of a defaulting Proprietor be put up for sale and no person shall offer to purchase them, his person and property of every description shall be liable for the balance to the operation of all the rules in force regarding defaulting Proprietors contained in Regulation XIV. of 1793.

9th. By this section it is clear, that if an estate cannot be sold, the property of every description belonging to the defaulting proprietor, and in the event of that not being sufficient, his person shall, under Section XIV. Regulation III. of 1794, be liable for the balance. The practical effects of this law, the Landholders' Society believe, would be highly detrimental to the interest of the Agricultural Community, which it is the object of Government to protect. It is evident that under strict construction of *this* law, a Zemindar who has the misfortune to hold an estate, which cannot realize the full amount of the Government revenue, or who might have ventured to purchase such an estate in the hope of improving it, but failed in the attempt from causes over which he had no controul, has no means of relief, but must continue for ever subject to the losses such a property might entail upon him, until all his other properties and ultimately his personal liberty, are sacrificed, to an honest speculation on the said estate.

10th. That such cannot be the intention of Government, the Landholders' Society is fully persuaded, and it therefore earnestly prays, that His Honor in Council will be pleased to take the foregoing observations into favorable consideration, and amend the proposed law, so as to provide against the evils pointed out—which may be effected by a Section empowering Government to put up such estates for sale once, and in the event of no purchaser appearing, then to place it in farm on *full* jumma—but should that fail, the Estate might then revert to Government and be brought under *Khas* management, and the Ex-Zemindar be released from all responsibility for arrears of Revenue accruing *subsequent* to that date. The Ex-Zemindar would of course have to pay the balance for which the Estate was advertised for sale, and any additional balance that might have accrued up to the date when the Estate was placed under Government *Khas* management. It is further submitted that a provision should also be made in the act to admit of the Zemindar paying the amount of his debt should he come forward to do so, on any day before that on which the arrangements for *Ezarah* may be concluded with the farmer, subject to such conditions as it may be please Government to require.

11th. Section X. of the proposed act provides, that a defaulting estate under the management of the Court of Wards, in the hands of trustees, be not sold during the minority of the rightful proprietor. The Landholders' Society has some observations to offer on this section also, which it begs to submit under two distinct heads, viz. that which relates to estates under the Court

X. And it is hereby enacted, that no Estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards; and no Estate, the sole property of a minor or minors, and descended to him by the regular course of inheritance, but of which the Court of Wards has not assumed the management under Regulation VI 1822, shall be sold for arrears of Revenue accruing subsequently to his or their succession to the same, until the minor or minors, or one of them, shall have attained the full age of 18 years. And no Estate held under attachment by the Revenue Authorities otherwise than by order of a Judicial Authority, shall be liable to sale for arrears accruing whilst it was so held under attachment. And no Estate held under attachment by a Revenue Officer, in pursuance of an Order of a Judicial Authority, shall be liable to sale for the recovery of arrears of Revenue accruing during the period of such attachment until after the end of the year in which such arrears accrued.

Court of Wards, and that which regards the estates, entrusted to the management of private individuals.

12th. It is an established principle that the paramount duty of a trustee in charge of a minor's property, is to protect the interest of his ward, and not to involve him in difficulties which may be avoided. This being admitted, should the Court of Wards find any estate absolutely incapable of realizing the Jummah assessed upon it, it would be the duty of the Court as trustee for the minor to get rid of such estate, and thus save its ward from the accumulated balances, which every succeeding year would create against him, and when he came to the management of his property, burthen him with a heavy debt for which his other property, and even his personal liberty would be liable. Such cannot surely be the intention of Government, and the Landholders' Society prays, that estates of the kind above described, be made *Khas* under the modified provisions of section IX. of this proposed act as above explained.

13th. Besides the arguments urged in the foregoing Para. in respect to estates under the Court of Wards, being applicable in all their bearings to those Estates which are managed by Private Trustees, there is one which applies with particular force in regard to the latter. A bar being put to the sale of the Minor's property, the trustee if he be dishonestly disposed, could withhold payment of the Government demand, even if the estate was more than able to pay it, and might thus, on the one hand, keep the Government out of its dues with perfect impunity; and on the other, after some years, possess himself of a large amount which he might embezzle, and thus ultimately involve the minor in inextricable embarrassments.

14th. The Landholders' Society is persuaded, it can never be the intention of Government to place any private individual entrusted with the management of a minor's estate in such circumstances of temptation, with powers so unlimited, and the fear of responsibility so distant, as would exist under the law in question. The Society therefore submits, that for the sake of clearness, a reference be made in this section to section IV. Regulation VI. of 1822, and that in such case as the one above contemplated, the Estate should be forthwith put under the Court of Wards, when, should that Court fail to make the Estate solvent, the remedy which has been suggested above in reference to other estates under that court, should be applied also to these estates.

15th. In order to remove every possibility of doubt, as to any undue advantage having been taken, or mismanagement having existed, as well as to satisfy the ends of justice and equity, the minor, on coming of age should be permitted to enter on the management of the estate which had formerly belonged to him, and had been circumstanced as described in the foregoing paragraphs, on his paying in full, the amount of the arrears accumulated during his minority, being the *bonâ fide* difference between the sums actually collected by Government during its *Khas* management and the Sudder *Jummah* of the estate.

16th. On Section XI. the Society has no remarks to offer.

XI. And it is hereby enacted, that it shall be competent to the Sudder Board of Revenue, and to the Local Commissioner of Revenue, to exempt any Estate or portion of an Estate from being notified for sale in the manner prescribed in Section IV of this Act; and in special cases to exempt any Estate or portion of an Estate from sale even after it may have been so notified, at any time before the day of sale, but in that case the order shall specify the reasons for exemption. And in either case arrears on account of an Estate so exempted shall be receivable, any thing in Section IV of this Act to the contrary notwithstanding.

17th. The indulgent provisions of Section XII. the Landholders' Society solicits, should be so far extended as to permit absent parties, not having a Mooktar or constituted attorney at the Sudder Station, to forward the amount of arrears by means

XII. And it is hereby enacted, that it shall be obligatory on all Collectors, Deputy Collectors or other officers as aforesaid, to receive at any time on the last day before the dates of payment fixed as prescribed in Section III. any amount of the arrear due from any Estate from any person not being a recorded Proprietor of the said Estate, who may tender the same, and to pass such amount to credit of the Estate for the liquidation of the arrear due on which it may have been tendered, and to grant to the person making such payment, a receipt under his Official signature and seal.

Memorandum.

Memorandum.

means of the public dawk, in Government papers, in the notes of the Bank of Bengal, or other public securities. The Society does not perceive any objection to this suggestion, and will therefore beg to observe, that it is eminently calculated to give greater practical effect to the provision already made.

18th. By the existing Law, a Mortgagee, or other lien holder of Malgoozarey land, however insecure he may be, yet, having a full month's notice after the due date for payment, of the *Kist* of the *Mohal*, could either press upon his debtor, or prepare himself for the liquidation of the public demand due upon it, and thereby obviate the necessity for the sale of the property; whereas by the above section, such mortgagee not being certain whether satisfaction of the *Kist*, will be made by the mortgager prior to the given date of payment, (at least he, the mortgagee, cannot ascertain it without actual default, when no payment would be received even if he were willing to pay,) must therefore, in every instance, be prepared with funds to guard against the recurrence of disappointment in payment of *Kists* on the part of the Maulgoozars. This serious inconvenience and risk will stand so formidably in the way that no prudent capitalist will venture to advance any money on the mortgage of Maulgoozaree Land.

19. Thus the privilege granted to the Zemindars by the existing Regulations [redacted], to transfer their proprietary rights in the lands, without the previous sanction of Government, to whomsoever they may think proper, by sale, gift, or otherwise, or to raise money thereon by mortgage, would necessarily, as far as the last named power is concerned, become inoperative, and this difficulty must consequently be a bar to all future improvement of Estates which may be compelled to depend upon borrowed capital.

20. It would be presumption on the part of the Society to bring to the notice of the Supreme Government the paramount importance of giving security to property. Such security for landed property and the money advanced thereupon is more requisite in this Country than in any other part of the world, both for the interest of the governors and the governed, particularly when the public revenue of India depends almost entirely on a Land Tax. The greater the security given to lands, and the money advanced thereupon, and the greater the facility afforded of transfer and negociation, either by sale or mortgage, the greater will be the value of real property and necessarily more ready will be the realization of the public demand thereupon.

21st. Under these circumstances The Society desires us to submit that the proposed enactment should be modified to the extent of allowing all *bonâfide* registered mortgagees to pay the *Kist*, *even* prior to the *day of sale*, under such conditions, and fine as the Government (if it should think such necessary) may deem proper to impose.

22nd. Section XIII. of the Act which recognizes a further lien in favor of the mortgagee or other person being the holder of a previous lien upon the estate, to the amount which he may have paid for arrears of Revenue, might, the Landholders' Society thinks, be extended, with advantage, to all creditors of the owner of the estate, and the said creditors, might in like manner, be allowed to have the benefit of a lien on the property, to the amount of the money they might pay to the collector in liquidation of the public demand.

XIII. And it is hereby enacted, that a receipt so granted shall be received in all Courts of Justice as evidence of payment of arrears in the manner described in preceding Section; and in the event of the holder of such receipt substantiating in any such Court a lien by way of mortgage or otherwise upon the Estate on account of which such payment was made, the amount acknowledged in such receipt shall be held by the said Court to be an additional to the principal sum of such lien, as if it had originally formed part of the same, and shall bear interest from the date of payment as aforesaid, at the rate borne by the principal sum.

23rd. We are further instructed to submit, that for the better security of such creditors, and in order to guard them against the recurrence of a similar call upon them, the collector should be empowered, on the application of such creditors, to attach the property, and bring it under the management of a *Sazawal*, in which position the estate should continue, until the amount advanced for the liquidation of the Government demand, might be paid off. In the case of mortgager continually squandering away the rents and profits of the *Mohal*, and failing to satisfy the revenue

while

revenue, (~~which~~ the Bond of the former not being due, the benefit of the provision of Regulation XIII. of 1808, could not be available) the mortgagee would be obliged for his own security to make successive payments to protect the mortgaged property, from being sold on account of arrears of revenue.

24th. Section XIV. seems to call for no remark.

XIV. And it is hereby enacted, that receipt as aforesaid shall be held by all Courts of Justice to be a full and complete acquittance *pro tanto* of rent which may be due from the same to the Proprietor or Proprietors of the Estate, to the credit of which payment of arrears may have been made in the manner described in Section XII of this Act, on account of Lands situated within such Estate.

25th. The deposit, of 25 per cent., on the amount of purchase, required by Section XV., the Landholders' Society fears will be found too heavy a demand, as earnest, on intending purchasers, and it is therefore respectfully suggested that the existing practice of taking 15 per cent. be allowed to continue.

XV. And it is hereby enacted, that the party who shall be declared the purchaser of an Estate by any such public sale as aforesaid, shall be required to deposit immediately either in Cash Bank of Bengal Notes or Post Bills, or Government Securities duly endorsed, 25 per cent. on the amount of his bid, and in default of such deposit, the Estate shall forthwith be put up again and sold.

26th. On this Section we also beg leave to observe, that some discretionary power for allowing a further reduction in the amount of deposit, be vested in the Collectors. Cases, it is not unlikely, would occur in which this discretionary power might be exercised with considerable benefit, both to Government, and the defaulting proprietor. A purchaser possessing great respectability and credit, might under the supposition that the estate he wished to bid for would go within a certain sum, be provided at the time with funds covering the percentage on such purchase money, and although the bidding exceeded such amount he might at the moment be induced to offer a trifle more. Under such circumstances, the Landholders' Society submits, that it would be injudicious to reject his offer, without taking into consideration its amount, his power to make good the purchase money, and other concomitant circumstances, and thereupon making such reduction in his deposit as the Collector might think proper. These observations apply with particular force, to those absent purchasers, who may empower their mooktiars to act for them. For even if the purchaser could, at the time, raise the additional amount requisite, it can scarcely be expected, that his mooktiar could do the same. Under these circumstances, the Society submits, that the Collector be vested with discretionary power to demand a deposit of not less than 10 nor more than 15 per cent. on the purchase money.

27th. The remarks, which the Landholders' Society has to offer on Section XVI. shall be submitted together with those on Section XXII., they being too intimately connected to admit properly of separation.

XVI. And it is hereby enacted, that the full amount of purchase money shall be made good by the purchaser before noon of the fifteenth day from that on which the sale of the Estate bought by him took place, reckoning that day as one of the fifteen, or on the sixteenth day, if the fifteenth day be Sunday or other close holiday; and in default of payment within the prescribed period as aforesaid, the sale shall be null and void, the deposit shall be forfeited to Government, the Estate shall be resold, and the defaulting purchaser shall forfeit all claim to the Estate, or to any part of the sum for which it may subsequently be sold; and in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any of the processes authorized for realizing an arrear of the Government Revenue, and it shall be so levied and credited to the defaulting Proprietor of the Estate sold.

28th. On Section XVII. and XVIII. the Society has no remarks to submit.

XVII. And it is hereby enacted, that re-sales rendered necessary by default of purchasers as above, shall be held on some day not being less than fifteen days from the date of such default, to be fixed by the Collector, Deputy Collector or other Officer as aforesaid, and notified in the manner prescribed by Section IV of this Act, and the Estate shall be sold for the recovery of the arrear actually due on the day of the original sale, under the same rules with regard to the payment of the deposit, and of the full purchase money, as are hereinbefore prescribed.

XVIII. And it is hereby enacted, that in the event of a second default, the Collector, Deputy Collector or other Officer as aforesaid shall proceed

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a second time in the manner prescribed in Section XVII of the Act, and so likewise, as often as need be, until the Estate be sold :—Provided always, that it shall be competent to the Collector to abandon the re-sale and to proceed anew to sale, at the next periodical sale, for all the balances then due, recalling the proclamation directed to be issued by Section XVII of this Act, immediately on determining on such abandonment.

29th. The Provision of Section XIX. forbids the Officers of the Collectorates, to purchase any property that may be sold under this Act, and requires that, should it be proved to the satisfaction of the Sudder Board that such purchase was made by any party contrary to this restriction, the property shall be escheated to Government. The order of the Sudder Board to be final. The Society begs to submit, that to prevent any officer of the collectorate, from purchasing a property in *Beenamy*, or if purchased, to detect it, would be under the existing constitution of the community nearly impossible; and much harm would be done, if such a system of secret transaction, could continue without attaching any direct responsibility to the officers, who may purchase the property in a fictitious name, or in the name of a relative or friend; nor the Society conceives can there be any impropriety in allowing a Collector's Officer, to purchase openly and fairly a property in his collectorate's sale, making him of course responsible in the Civil and Criminal Courts for his conduct in the transaction. This, we are persuaded, would be a more efficient measure, to prevent the abuse of power, than the one proposed in the section.

XIX. And it is hereby enacted, that if the Collector, Deputy Collector or other Officer as aforesaid, conducting the sale, either at the time of concluding the sale or at any subsequent time before the sale may have become final, see reason to believe that the real purchaser is a person on his Establishment, or in any way connected as being a servant or nominee of Government with the management of the Collections of the Zillah or Perguanah within which the lot sold may be situated, he shall nevertheless, (if the question be raised before the conclusion of the sale) knock the lot down, and in all such cases it shall be his duty to institute an immediate investigation in order to bring the matter to proof, and the result of the proceedings that may be so held shall be submitted to the Commissioner, who will after investgation either dismiss the case if he consider it not proved, or if it be proved submit it for the orders of the Sudder Board of Revenue, who will if it shall appear expedient direct the lot to be escheated to Government, and whose order shall be final. The amount of the purchase money shall in that case be credited to the defaulter in the same manner as if the sale stood good.

30th. Besides, the decision of the Sudder Board, being made *final* in cases of this nature, is, we submit, highly objectionable on principle. The Society holds it, as an admitted doctrine, and which has also been recognized by the preamble of Regulation II. of 1793, that, in cases of Judicial question, the fiscal officers of Government, should have no interference in it; we are therefore instructed to solicit that the section be further modified, that no property should be escheated to Government by order of the Sudder Board, until a final Judicial decree of the established court.

31st. On Section XX. and XXI. the Society has no observations to make.

XX. And it is hereby enacted, that if after a sale has become final it shall be proved by a suit decreed in Court that the Estate has been illegally purchased by a Revenue Officer of Government (whether the suit shall have been instituted by the Collector on the part of Government or by the former owner of the Estate sold, or by any other party having an interest in the Estate) in case there be no appeal lodged from the decree the Court passing the decree, or if there be appeal, the Court passing the final judgment shall forward the decree to the Governor General in Council, who shall be competent to order that the Estate be confiscated, and restored to its original Proprietor.

XXI. And it is hereby enacted, that whenever an Estate is notified for absolute sale as provided by Section IV of this Act, the Collector, Deputy Collector, or other Officer as aforesaid, shall affix a proclamation in the language of the District in his Cutcherry, and as soon thereafter as may be in the Cutcherries of the Moonsiffs and the Darogahs of Police, within whose jurisdiction or jurisdictions any part of such Estate may be situated, and also at the Cutcherry of the Malgoozar of such Estate, or on some conspicuous place on such Estate, forbidding the ryots and undertenants of such Estate to pay rent to the defaulting Proprietors from the date of such notification to the date of the subsequent notice hereinafter prescribed by Section XXX of this Act, on pain of not being entitled to credit in their accounts with the purchaser for any sums paid within the period aforesaid.

32nd. By Section XXII. the ex-zemindar is permitted to appeal for rescindment of the sale within 15 days, and the commissioner

XXII. And it is hereby enacted, that no appeal against a sale under this Act shall be received by the Revenue Authorities, which is not presented to

the Collector or other Officer as aforesaid, to be forwarded to the Commissioner, within ten days from the day of sale, or which is not preferred to the Commissioner directly within fifteen days from the said date.

missioner alone is empowered to decide upon that appeal. The Society begs to submit that the period of 15 days allowed for appeal is two short, and that in many cases it would bear with great severity on the ex-zemindars, particularly in the case of an absentee zemindar living at a place of some 4 or 500 miles distance from the district, where a reply to a letter dispatched by Dawk, could hardly reach within the time allowed: the Commissioner or the appeal authority is moreover frequently on circuit from one district to another, which must, to some extent, risk a delay in the presentation of the appeal petition, when these facts are taken into consideration, we respectfully trust that the Supreme Government will extend the period of appeal from 15 to 25 days. It would also be but just that no purchaser be compelled to pay the full amount of his purchase, 15 days before the receipt of a notice to be served upon him or his agent on the receipt of the Commissioner's confirmation of the sale at the collectorate. It would be hard indeed if a purchaser were to raise a loan upon heavy interest for a fixed period, say one year, in the hope of retaining the purchased property, and then be deprived of the purchase, and his money returned to him, to remain unemployed in his hands, whilst he was compelled to pay interest on it.

33rd. The foregoing paragraph having presupposed the payment of the purchase money 15 days after the notification above mentioned, the necessity of any remarks on the provisions of Section XVI., which directs payment to be made 15 days after the sale, is superceded.

34th. On Section XXIII. and XXIV. the Society has no remarks to submit.

XXIII. And it is hereby enacted, that the Commissioner of Revenue shall be competent to annul any sale of an Estate made under this Act which shall appear on appeal not to have been conducted according to the Provisions of this Act: and the order of the Commissioner annulling a sale shall be final.

XXIV. And it is hereby enacted, that no claim to abatement or remission of Revenue unless the same shall have been allowed by the authority of Government, nor any private demand or cause of action whatever held or supposed to be held by any defaulter against Government shall bar a sale, nor render a sale under this Act illegal.

35th. The provision made in Section XXV. of a previous application of 15 days at least for the transfer of a deposit in the collector's Treasury, evidently involves a great hardship to the party concerned. Indeed, it is an anomaly that a person having his money with the collector, and yet because it happened to be received a day later than 15 days before the date fixed for the payment of the demand against him, is not to have the benefit resulting from the transfer of his own money, for the payment of his own debt in the collectorate, under such circumstances, the Landholders' Society thinks the shortest notice ought to be sufficient for the transfer, and it accordingly prays that a modification to that effect be made in the proposed act.

XXV. And it is hereby enacted, that no claim on account of a deposit in the Treasury of the Collectorate at which the sale is held shall bar a sale, nor render a sale under this Act illegal, unless the party objecting to such sale prove that application was made in due form, and to the proper authority for the transfer of such deposit to the credit of the Estate sold by the party entitled to require such transfer to be made, fifteen days at least before the date fixed in the manner prescribed in Section III of this Act, if the Estate be in a permanently settled District of Bengal, Behar, or Orissa, or otherwise at any time before the date fixed in the manner prescribed in Section V. of this Act.

36th. On Section XXVI. the Society has no remarks to offer.

XXVI. And it is hereby enacted, that no sale for the recovery of arrears of Revenue shall be annulled by any Revenue Authority subordinate to Government, except upon proof of the sale having taken place contrary to the Provisions of this Act. Provided always that nothing in this Act shall be construed to debar any person considering himself to be wronged by any act or circumstance connected with any such sale from seeking his remedy by an action for damages in the Dewanny Adawlut against the public officer by whose act or by whose laches he considers himself aggrieved.

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37th. The spirit, in which the provision of Section XXVII. is conceived, is certainly liberal, but the general term '*equitable*,' applied to the conditions on which an estate is to be restored, appears to be too vague to inspire confidence among intending purchasers. If a purchaser has in no way connived at the hardship and injustice done to the late proprietor, he ought, in justice, to receive such compensation, as the Government may deem equitable in proportion to the loss of his time and labour in improving the purchased property, and to the possible employment of his money in more profitable speculations.

XXVII. And it is hereby enacted, that it shall be competent to the Local Government, on representation from the Sudder Board of Revenue or otherwise, in cases of excessive hardship or injustice, at any time within one year from the completion of a sale made under this Act, to annul the sale, and to cause the Estate to be restored to the Proprietor on such conditions as may appear equitable and proper.

38th. In regard to Sections XXVIII. and XXIX. the Landholders' Society has no remarks to make; but on the subject of the payment of the purchase money, adverted to in those Sections, it begs leave to suggest that the collector be authorized to issue a notice, similar to that mentioned in paragraph 32, to the purchaser, after the expiration of 30 days from the day on which the sale becomes legally final, to make good the balance of the purchase money within 15 days as provided for.

XXVIII. And it is hereby enacted, that except in the case provided for by Section XXVII, all sales of Estates confirmed on appeal by the Commissioner shall, if the purchase money have been paid up as prescribed by Section XVI of this Act, be final and conclusive from the date of such confirmation.

XXIX. And it is hereby enacted, that except in the case provided for by Section XXVII, all sales of which the purchasers notify has been paid up as prescribed in Section XVI of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the thirtieth day from the day of sale, reckoning the said day of sale as the first of the said thirty days.

39th. On Section XXX. and XXXII. the Society does not find it requisite to offer any remarks and the necessity for the provisions of Section XXXI. appears to be superseded by the amendment proposed in the provisions of Section XVI. and XXII., vide para. 32 of this address.

XXX. And it is hereby enacted, that immediately upon a sale becoming final and conclusive, the collector or other Officer as aforesaid shall register the name of the purchaser as Proprietor of the Estate sold, without any charge for the same, shall notify such transfer by written proclamation in his own Cutcherry, and in those of the Moonsiff and Darogah of the jurisdictions within which any part of the Estate sold shall be situated, and shall apply the purchase money to the liquidation of the arrear due upon the day of sale, or upon the day of the original sale, if the sale finally consummated be a re-sale, holding the residue, if any, in deposit on account of the late recorded Proprietor or Proprietors of the Estate sold, to be paid to their receipt on demand in the manner following; to wit, in shares proportioned to their recorded interest in the Estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of Proprietors upon their joint receipt.

XXXI. And it is hereby enacted, that the annulment of a sale by a Commissioner shall be publicly notified by the Collector or other Officer as aforesaid in the same manner as the becoming final and conclusive of sales is required to the notified by Section XXX. of this Act; and the amount of deposit and balance of purchase money shall be forthwith returned to the purchaser, with interest thereon at 5 per cent. from the dates on which they were respectively paid in, to the date on which the refund is actually made.

XXXII. And it is hereby enacted, that the party recorded as the Proprietor of an Estate by purchase at public sale for the recovery of arrears of Revenue shall be answerable for all instalments of the Revenue of Government which many fall due subsequently to the day of sale; provided, however, that in sale of the nature specified in Sections XVII. and XVII. of this Act, the purchaser shall be answerable for all instalments of Revenue which fell due subsequently to the date on which the Estate was originally advertised for sale.

40th. We beg leave respectfully to suggest that, as in Section XXV. Regulation XI. of 1822, it be provided in Section XXXIII. of the proposed Act, that persons commencing a regular suit to set aside a sale, shall not be allowed to bring forward any plea, which had not been urged before the Revenue authorities prior to the completion of the sale. The limit of 12 years generally put upon the prosecution of all claims in the Civil Courts, we beg to submit appears to bear heavily upon purchasers of Estates, and we

XXXIII. And it is hereby enacted, that no person shall be entitled to contest the legality of a sale after having received any portion of the purchase money; and that no part of the surplus proceeds of the sale of an Estate, shall be liable for the private debts of the late Proprietor, whilst a suit to set aside such sale as illegal is pending in any court of Justice.

we therefore take the liberty to propose that in Revenue sales, the period be limited to 3 years only, unless the petitioner should be able to establish some sufficient ground for his laches to the court. We also beg to submit that it would be a very great blessing to the people, without any sacrifice to the Government to allow the sums remaining in deposit in the Collector's hands, awaiting the issue of a suit to bear the same rate of interest as Government Security for the time being.

41st. Section XXXIV. provides that in case of any sale being reversed by a final decree of any Court of Justice, the purchase money shall be refunded to the purchaser by Government, together with interest at the rate of 5 per cent. per annum. The Society submits that it indeed bears very hard on the purchaser that the amount of his purchase should be returned to him at a rate of interest which would often be lower than he was obliged to pay, when raising the said money; or than he could have obtained had his capital been employed in any other way. Under these circumstances the Society suggests that it would be equitable to all parties to leave it to the court to name the rate of interest on such refunded money, according to the particular complexion of each case.

XXXIV. And it is hereby enacted, that in the event of any sale being reversed by a final decree of any Court of Justice, the purchase money shall be refunded to the purchaser by Government, together with interest at the rate of five per cent. per annum. But if an arrear was due upon the Estate on the date of notification for sale, the Estate shall be held under attachment by the Collector and shall not be restored to the Proprietor until that arrear is paid.

42nd. In addition to the powers vested in the fiscal officers by Section XXXV. of the proposed act, the Landholders' Society is of opinion, that those functionaries should also be vested with additional powers to settle boundary and other disputes as provided in Section XXXIII. Regulation XI. of 1822, the dissatisfied party having the right of instituting a regular suit, in the Dewanny Adawlut. The last mentioned Regulation having been rescinded by this act, the provision of Section XXXIII. of Regulation XI. of 1822, it is suggested should be embodied in the Section now under review.

XXXV. And it is hereby enacted, that in the event of further measures than those specified in Section XXX of this Act being found necessary for the purpose of putting the purchaser in possession, the Collector or other Officer as aforesaid shall put the purchaser in possession in conformity with this Act, and the Collector or other officer as aforesaid shall possess and exercise to that end all the powers possessed and exercised by Courts of Justice for giving possession of Landed Property under decrees of Court.

43rd. The Landholders' Society believing that the tenures alluded to in the 1st and 2nd Clause of Section XXXVI. are those which are protected by Regulation VIII. of 1793, has no remarks to submit; but in regard to the tenures referred to in the third clause, viz. lands held by Khoodkust or Kudeemee Ryots having the right of occupancy at fixed rates, the Society directs us to submit the following observations for the consideration of His Honor in Council.

XXXVI. And it is hereby enacted, that the purchaser of an Estate sold under this Act, for the recovery of arrears due from itself, in the permanently settled Districts of Bengal, Behar, and Orissa, shall be entitled to enhance, in the manner prescribed in the Regulations, the rent of all undertenures in the said Estate, with the following exceptions:

First. Tenures which were held as Istemraree or Mocurreree, at a fixed rent, more than 12 years before the permanent settlement.

Secondly. Tenures existing at the time of the Decennial Settlement, which have not been, or may not be proved to be liable to encrease of assessment, on the grounds stated in Section LI Regulation of 1793

Thirdly. Lands held by Khood Kasht or Kudeemee Ryots, having rights of occupancy at fixed rates,

Fourthly. Lands held under bona fide leases temporary or perpetual, for the erection of dwelling houses, or manufactories, and being so used, or for gardens, tanks, canals, or like purposes.

Fifthly. Farms granted in good faith by a former Proprietor, for terms not exceeding twenty years, under written and duly registered leases, stipulating for the payment of an annual rent not less than the average net rent realized from Lands of the same description in the vicinity during the three years immediately preceding the year in which the lease as aforesaid was granted.

Provided that nothing in this Section contained shall be held to authorise any such purchaser to enhance the rent of any Talookdar, Ryot, or Cultivator, beyond what the late proprietor would have been entitled to demand from the same according to the established usages and rates of the Perguna or District, if no engagement had existed between them.

44th. The Society concludes that the right of that class of Ryots here intended to be protected is that which is named in Clause 2 Section LX. Regulation VIII. of 1793. With a full confidence in the laudable motives of the Supreme Government to protect by the present Act, the rights of all classes of Landholders and undertenants, as well as to define more clearly the immunities belonging to their respective tenures, we beg respectfully to submit, that it would be considered a boon

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a boon by the Landholders and their Ryots, if the particular description of tenures here alluded to, under the designation of 'Khoodkhist or Kudumee' were to be clearly defined, and the nature of the rights thereto appertaining, fully explained; such a declaratory provision would in a great measure remove the cause of that unnecessary litigation, into which people now so frequently enter for want of a proper knowledge of their respective rights and privileges as secured by law.

45th. It is already known to the Government that the tenure Khoodkhost Ryots, means as explained in the 32 Section of Rugulation XI. of 1822, Koodkhist, Kudemee Ryots or residents, and hereditary cultivators having a prescriptive right of occupancy, and that as such, they cannot be ejected from their possession so long as they pay their stipulated rent at a fixed rate according to the Purgunnah Nerick.

46th. The fundamental Regulation, viz. VIII. of 1793, Section. LX. Clause 2 is intended to secure the immunities of those Khoodkhost Ryots as were in possession of their lands prior, to the period of the decennial settlement in holding their lands at the rate of the *Nerich Bundy* of the Purgunnah and neither the wording nor spirit of the regulations can be supposed to apply prospectively to all resident cultivators generally who have derived their rights from Zemindars, subsequently to the permanent settlement. The right of the latter must be annihilated with the right of the Zemindar by a revenue sale as provided in Section V. Regulation XLIV. of 1793, with the exception noted in Section VII. and VIII. of that Regulation.

47th. Thus it will be seen that the resident Ryots may be divided into two classes, viz., those who are holding possession from a period anterior to the permanent settlement, and those who have come to reside on the estate subsequently to it. The Landholders' Society presumes that the protection afforded by the clause in question is intended to apply only to the former of these two classes of Resident cultivators, and that the latter are to be considered as mere tenants at will.

48th. If the Supreme Government thus construes the law which the Society doubt not it will, respecting the distinction of the immunities of these two classes of Ryots, we are requested to solicit that a definite Section be introduced in the act to remove existing doubts on this question, which doubts may often lead to unnecessary litigation and contradictory decisions particularly in the Courts of Sudder Ameens and Moonsiffs, where such questions, owing to the amount in dispute, are in the majority of cases brought to issue, and whose decisions under the existing laws cannot have the benefit of correction by an appeal in the Sudder Dewanny Adawlut—the highest judicial tribunal in the country.

49th. On Clause 4 Section XXXVI, the Society has no remarks to submit.

50th. Clause 5th excludes the purchaser of an estate from the power of ejecting or enhancing the rent of farms granted on good faith by the former proprietor on leases not exceeding 20 years. This the Society begs leave to observe appears objectionable First because when a Zemindar finds that his Estate will soon be brought to the hammer, he will consider it his interest to give such apparent *bonâ fide* farms to his relations and dependants, and thereby virtually shackle the purchaser for at least 20 years from making any new arrangement in regard to the lands there farmed out. This would be tantamount to a fraud, and yet the provision under review opens a wide door for it. Secondly.—It is an anomaly and an inconsistency thus to protect a mere temporary leaseholder, and leave the Puttuneedars who have obtained their rights not only on good faith of the former-Zemindar, but by actually paying a good consideration, unprotected against the operations of Section V. Regulation XLIV. of 1793, and other laws on that subject. Secondly, by this clause the rent of such a farm is secured on the data afforded by an average of the rent realized from lands of the same description in the vicinity for the three preceding years. Suppose the Zemindar were to choose such three years as occurred during the late famine in the Upper Provinces, or the inundation which some time before laid waste the Southern Districts of Bengal, when the estates were, as too well known to Government, unable to pay the Sudder revenue, and having thus farmed it out at a reduced Jumma, allowed the estate to be brought to the hammer; how would the purchaser realize from it the Jumma due

due to Government, and if it fell into the hands of Government, how could the Government get rid for 20 years of these leaseholders who would during that period, under a favorable season, continue to enjoy the advantages of so low a *quit* rent as to be almost a species of *Ayamakdars?* Indeed it would appear that these 20 years leaseholders are for that period, to be placed on a far better footing than the Kudeemee Khoodkhost Ryots; for whilst the latter have their rents determined according to the *Nerich* of the Purgunahs, the former by conniving with the Zemindar might have the rent fixed according to the realization of three of the worst years.

51st. The wording of the Proviso at the conclusion of Section XXXVI. does not appear to be sufficiently clear. Is it meant to bar the Zemindar from ejecting any of his Ryots, without reference to the nature of the tenures? If so, it at once destroys the very basis of the fundamental law on which the permanent settlement stands, by closing the door against all improvement; but if not, a clear explanation to that effect appears to be indispensable. Suppose the Zemindar wished to take the lands from his tenants who were not Kudeemee Khoodkhost, but Pykost or new tenants, and lay them out himself in a manner so as to yield him a better return, which the Ryot for want of sufficient capital or industry could not, or would not accomplish, has the Zemindar no power to eject the Pykast or new Ryot on his refusing to enter into a new arrangement and improve his lands? These are questions arising out of the Proviso under reference, which that Proviso does not answer, and therefore we respectfully submit should be taken into consideration and clearly explained.

52nd. The Society presumes that it cannot be the intention of the Supreme Government at this remote period to interfere with any immunities which were secured to the landholders by the laws of the permanent settlement, which however would be the case was the power of ejecting all classes of ryots, refused to the Zemindars without reference to the nature of the tenures.

53rd. The Society desires us to state that the opinion it has taken the liberty to submit, in regard to the rights and privileges of Sudder Malgoozars and various classes of undertenants, appears entirely to coincide with that of Mr. Leycister, the late senior Judge of the Sudder Dewaney Awdalut and the Honorable Mr. Ross, the late Deputy Governor of Bengal, then 4th Judge of the Court, in opposition to that of Mr. J. H. Harrington, who attempted in a proposed Regulation in the year 1827, to grant certain new immunities to the Ryots at the sacrifice of the Sudder Malgoozars. But the said proposed Regulation, the Society is glad to find, was rejected without being promulgated or published by the Governor General in Council. We beg to refer the Government to the said minutes of Messrs. Leycister and Ross, when it shall again take this subject into its consideration.

54th. On Sections XXXVII. and XXXVIII. the Society has no remarks to submit.

XXXVII. And it is hereby enacted, that in the event of any purchaser at public sale as aforesaid proceeding against any tenant claiming to belong to one of the abovementioned classes, on the plea that the tenant does not really so belong, the burthen of proof that he does belong to an exempted class shall be on the tenant sued.

XXXVIII. And it is hereby enacted, that the purchaser of an Estate sold under this Act for the recovery of arrears due from itself, in Districts other than those mentioned in the last preceding Section, shall be competent to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with *ryots* or the like settled or credited by the first engager or his representatives, subsequently to the settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except *bona fide* leases of ground for the erection of dwelling houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water courses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing in this Act continued shall be construed to entitle any purchaser of Land at a public sale to disturb the possession of any village *Zemindar, Putteedar, Mofussil Talookdar*, or other person having a hereditary transferable property in the land, or in the rents thereof, not being one of the Proprietor's party to the engagement of settlement or his representative; nor to eject a *Khoodkhast Kudeemee ryot*, or resident

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and hereditary cultivator, having a prescriptive right of occupancy. Nor to demand a higher rate of rent from an under-tenant of either of the above descriptions, than was receivable by the former *Malguzar* saving and except in cases in which such under-tenants may have held their lands, under engagements, stipulating for a lower rate of rent than would have been justly demandable for the Land, in consequence of abatements having been granted by the former *Malguzars* from the old-established rates by special favour, or for a consideration, or the like, or in cases in which it may be proved that according to the custom of the *Pergunah Mouzah*, or other local division, such under-tenants are liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government.

55th. With reference to Section XXXIX. of the proposed act the Society begs leave to observe that Section IX. of Regulation V. of 1812, enables the zemindar to sue his tenants for rents summarily by giving them a year's previous notice reckoning from Bysack the commencement of the year; and Section XVI. of the same Regulation provides that, without such notice, no enhanced rent can be realized from them: but Section X. Regulation VIII. of 1831, virtually rescinds the above laws by providing that the summary jurisdiction to be exercised by the collector be restricted to the object of enforcing payment of the rents paid in past years to the entire exclusion of all claims, except on proof of *bonâfide* written engagements for such increase. Under these circumstances a new purchaser who has not the Kubooluts of the Ryots, nor other document of the Ex-Zemindar must find it exceedingly difficult to recover his rents. This difficulty is not a little increased by the provisions of Section XXXIX. of the proposed act, which throws the Zemindar upon the necessity of regular suits in the Civil Court for the recovery of rents. Because in the absence of these documents, it is impossible for the purchaser successfully to prosecute summary suits on taking possession of the estate. Now three years is the least which would be required for a Zemindar under the existing law to be able to ascertain *judicially* the nature of the different tenures held by his ryots, and the rents due for them respectively. During this period he must not *only* pay the Government demand out of his separate funds, but *be* also put to the necessity of conducting perhaps as many regular and appeal suits as he may have tenants, and paying all the costs attendant on these suits, which in a large estate would be far from inconsiderable; perhaps the cases might amount to 7 or 8 thousand.

56th. Under these circumstances an intending purchaser must, in estimating the value of the estate, take into account the expence of law charges he may be obliged to incur, the trouble he must have in conducting them, the delay he must be subjected to, and the funds he must provide for paying the Government demand all the time he is kept out of his rents. All these considerations (none of them unimportant) he will naturally place against the advantages he expects from purchase, and then decide whether he can prudently and safely venture on it. In a country like this, the public revenue of which depends, as we have already said, almost entirely on its Land tax, the impolicy of creating these difficulties, and necessarily reducing the value of the land is too manifest to need further notice.

57. Another consideration which the Government should not lose sight of, is the probability of an estate thus circumstanced being forced up on its hands under circumstances which have already been spoken of, and of its being placed in the situation of the purchaser, whose difficulties and disadvantages have been enumerated in the foregoing paragraph.

58th. To remedy these serious evils, the Landholder' Society begs respectfully to suggest, firstly, that the provisions of Section IX. Regulation V. of 1812 be restored to their original force, and that summary suits be allowed to be instituted by the Zemindar on his giving due notice as required by that law; with this exception, that the provision which restricts the time of serving the notice to the commencement of the year, be not applicable to the new purchaser during the first year of his purchase, but that he be allowed to prove such notice, and get the benefit of the provision at any time after he shall have obtained possession of the purchased property.

59th. The Society also begs leave to suggest that the provisions of Section IV. to VIII. Regulation V. of 1812 which are now applicable only to the cancelling

ing of collusive *pattahs*, be extended to all suits instituted under the above notice, reserving to the parties the rights of preferring a regular suit, the summary decision in such a case of course not in any manner affecting the rights of the parties to it.

60th. The Society takes this opportunity of submitting that as Government is very properly about to adopt, by the proposed Act, more efficient measures to recover the revenue due to it from the Malgoozars, and of which the Society is persuaded that no Zemindar in the permanently settled Province can have any reason to complain, that it would be an Act of Justice were the Sudder Malgoozars, who are made subject to so heavy a requisition by the said Law, furnished with more expeditious means for the realization of their rents from under tenants than that provided for by Clause 7 Section XV. Regulation VII. of 1799.

61st. The provision in question, however inefficient for the recovery of rent still by its being modified by Section X. of Regulation VIII. of 1831, which provides 'that the summary Jurisdiction to be exercised by the Collector shall be restricted to the subject of *enforcing payments of the rents paid in past years* to the entire exclusion of all claims to increase, was rendered a formidable bar to the realization of the just claims of the Zemindars; as no proviso appears to have been made against the contingency of the calamity of the season which might reduce the realization of rent for a few years below the actual standard of the *Jumma*, and in such case, a Zemindar for his indulgent consideration towards the Ryots, would be deprived of the benefit of Summary suit in regard to the *actual Jumma*.

62nd. Besides, in a Summary Suit, even when prepared according to the provisions of the existing Law, and its proceedings conducted with all expedition, while the claim commands the advantage of the written *Koobulet* of the Ryot, and when the suit is allowed by him to proceed *ex parte* without any opposition by a sham plea—the final decree of the case, and the recovery of rent under the execution of the said decree will, from the forms of practice of the Court, be delayed at least 3 or 4 months. And in case of opposition or defect of written evidence *this* delay may be indefinitely increased so as to render this remedy abortive, Should the Supreme Government deem it necessary to ascertain the practical operation of the Summary Suit, we beg to suggest that reference be made to the Moffussil Authorities for returns of any one year containing the dates of commencement of the Summary Suits, their final decision, and when money was realized by the plaintiff.

63rd. The Society submits that it is a severe hardship upon the Zemindars that the demands of Government should be enforced against them under one Law, which affords neither indulgence as to the time of payment, nor allows a Judicial form of process, whilst on the other hand the Sudder *Malgoozars* are compelled to enforce their claims against the Ryots, out of which the dues of Government must be collected, by a process involving considerable delay, expence, and annoyance. It is evident that the reason for a summary inforcement of the claims of Government against the Zemindar is still stronger in the case of the Zemindar against the ryot, as the latter can in almost all cases run away and remove his property, whilst the Zemindar cannot in any mode diminish the value of the property out of which the claim of Government is to be satisfied.

64th. In order to remove the grounds of complaint above submitted, without requiring any extensive alteration either in the existing law or the forms of proceeding, we are directed respectfully to suggest that as all hereditary transferable Ryoty tenures known in different districts by various names as *Jote, Gattey, Howalah, &c.* are in principle almost the same in regard to rights and immunities as Putnee leases that the provision of Regulation VIII. of 1819, be made applicable to them with this modification of Section VIII. viz., that the sale of the said tenures for arrears of rent be made quarterly instead of half yearly. To guard against any possible abuse of power on the part of the Zemindar or of the indulgence on the part of the Ryot, we further suggest that when there is no written engagement, the amount so made recoverable on the part of the zemindar by summary

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summary process, be limited to the highest amount of rent actually paid by the Ryôt in any one of the twelve years immediately proceeding the suit.

2. When the amount is specified in the *Kuboolet*, that sum to be the limit of the summary process.

3. That when the amount is defined by a previous decree whether summary or regular, then the suit to be limited to the amount so defined, and that neither an increase of *Junma* on the part of the zemindar or abatement on the part of the Ryot be claimable without the formal decision of a competent tribunal.

65th. Equity and justice require that a sharer, who does not default, should not be barred from the rights enjoyed by other purchasers, for he is as much a *bonâ fide* purchaser of the estate as any other. The provision of Section XL., we therefore beg respectfully to submit, should be modified on these grounds. The proposed modification being the present practice, we trust it will receive the sanction of Government.

66th. On the Sections XLI. and XLII. the Society has no remark to make.

XLI. And it is hereby enacted, that arrears of rent which at the dates of sale may be due to the defaulter from his tenants, shall be recoverable by him by suit in Court in the prescribed form.

XLII. And it is hereby enacted, that the name delivered in to the Collector or other officer as aforesaid by the party to whom an Estate shall be sold under this Act, shall be recorded as the name of the Proprietor of such Estate, and any suit to oust him on the ground of fictitious purchase shall be dismissed with costs by any Court of Justice in which it may be instituted.

67th. It may often happen on occasions of sale, that a person bidding for an estate has not a regular *Mocktear-namah* at the time, from the person on whose behalf he may be bidding. It would therefore, the Society thinks, be better if the name delivered at the time of the payment, and not that given at the time of the sale, be considered as the recorded name of the proprietor of the estate.

68th. On Sections XLIII. to XLV. the Society has no observations to offer.

XLIII. And it is hereby enacted, that any covenanted officer employed in the collection of Land Revenue, or in the Superintendence thereof, shall be competent to punish any contempt committed in his presence in open Cutcherry, or office, for the time being, by fine, to an extent not exceeding Co.'s Rs 200, commutable if not paid to imprisonment in the Civil Jail for a period not exceeding one month: and the Magistrate to whom such an offender may be sent by a Revenue Officer as aforesaid shall carry his sentence into effect. Provided that an appeal from any order passed under this Section shall lie to the superior Revenue Authorities in the usual course.

XLIV. And it is hereby enacted, that a default to make good a bid by making the deposit required by Section XV of this Act shall be held to be contempt.

XLV. And it is hereby declared and provided, that when the Estate of a defaulter or his surety may be sold for the recovery of an arrear of Revenue, not being the Estate on account of which the arrear accrued, then whether the said Estate consist of *Malgoozaree* or *Lakkeraj* land, the purchaser only acquires the rights, interests, and title possessed by the said defaulter or surety, in like manner as if the land had been sold by private sale or under a decree of Court in liquidation of a private debt. But when an Estate is sold for the recovery of any part of the Revenue assessed upon it, the act of sale transfers to the purchaser all the property and privileges which the engaging party possessed and exercised at the time of settlement, free from any accidents or incumbrances that may subsequently have been imposed, or have supervened thereupon, such as sale, gift, or other transfer, mortgage, marriages settlement, or other assignment, or the like, and the property and privileges possessed and exercised as aforesaid, being perpetually hypothecated to Government, for the Revenue assessed on the Land, no claim of right founded on any act of the original engager or his representative, or on any plea impeaching the title by which the said engager may have held, shall be allowed to impugn the right of the Revenue Authorities to make the sale, or to bar or affect the title and interest conveyed to the purchaser by the sale. Provided however, that if Government shall have acquired or assumed the property of any Estate subsequently to a settlement, and shall have conveyed the same to another, the Estate shall be held subject to all just claims to which it was liable at the time of such conveyance; and the party ousted on the assumption or acquisition by Government shall not be barred by a sale made after such conveyance of any right he may have possessed to recover from Government the property so assumed or acquired by it.

69th. With reference to Section XLVI. we beg to submit that a man suing another may sometimes be unable to give security. In such a case it would be a great

great relief if he were permitted on presenting a petition to that effect to have the estate attached and brought under *Koruck* management, and thus the Government demand be realized and the balance, if any, await the decision of the suit.

70th. The Society has but one further remark to submit. Section I. of the proposed act repeals the existing laws, in regard to the recovery of rents and other provisions as therein specified, and Section XXXVI. of the same act provides only for such as become purchasers under that act, evidently leaving the case of those who may make purchases before the date of the promulgation of this law, but have not been able to realize their possession or rents, unprovided for. The Society would beg leave to suggest as a remedy that the provisions of this act be allowed to have a retrospective effect, in all cases, which would prevent the creation of a new and distinct kind of right, and lead to a great confusion in the administration in the Moffusil, and eventually require separate laws to provide for them.

71st. In conclusion, the Landholders' Society instructs us to say that it regrets much that this letter has extended to such length, but the importance of the subject will plead an apology; and we are further desired to state that the Society will at all times be ready to afford any further explanation on the points mooted in this address, or on any other point on which His Honor in Council may thinks proper to call for explanation.

We have the honor to be, Sir,

Your most obedient servants,

W. Cobb Hurry,

Prossonno Coomar Tagore.

Honorary Secretaries to the Landholders' Society.

Calcutta, 1st December, 1839.

Memorandum.

FORT WILLIAM,

LEGISLATIVE DEPARTMENT,

THE 18TH JANUARY, 1841.

BENGAL SECRETARIAT LIBRARY.

The following Extract from the Proceedings of the Right Hon'ble the Governor General in Council, in the Legislative Department, is published for general information.

Read a second time, the Draft of a proposed Act, dated the 14th October 1839, and published in the Calcutta Gazette of the 16th of the same month, for amending the Bengal Code in regard to Sales of Land for Arrears of Revenue.

Resolution.—The Right Hon'ble the Governor General in Council resolves that the following amended Draft on the subject be republished for general information :—

ACT No. —— of 1841.

An Act for amending the Bengal Code in regard to Sales of Land for Arrears of Revenue.

Preamble.

I. Whereas it is deemed expedient with a view to the benefit of the Agricultural Community, to regulate the number of periodical sales of Estates for arrears of Revenue; to discontinue the levy of interest and penalty upon such arrears; to provide for the absolute sale (under restrictions and exceptions in certain cases) of any Mehal, the whole of the Land Revenue due from which may not have been discharged on or by appointed days; and otherwise to amend the laws for the realization of the Land Revenue;—

Regulations rescinded.

It is hereby enacted, that Sec 2, Reg. XIV. 1793; Sec. 2, Reg. III. 1794, Reg. XI. 1822, except Sections 36 and 38, and Reg. VII. 1830 are rescinded, except in so far as they rescind other Regulations or parts of Regulations.

Interest and Penalty abolished.

II. And it is hereby enacted, that there shall be no demand of interest or penalty upon any arrear of Land Revenue which shall fall due after the date specified in Section XXXIII. of this Act.

Days fixed for Sale.

III. And it is hereby enacted, that upon the promulgation of this Act the Sudder Board of Revenue at Calcutta, shall determine with regard to each permanently settled District or Zillah under their jurisdiction, the fixed days in each year not being more than three, on which and on no other days sales shall be held for realization of arrears of Land Revenue. And the said Board shall give notice of the dates so fixed in the Calcutta Gazette; and shall direct corresponding publication to be made, as far as regards each District, in the language of that District, in the Office of the Collector, or Deputy Collector, or other Officer duly authorized to hold sales under this Act, and in the Courts of the Judge, Magistrate, Principal Sudder Ameens, Sudder Ameens, and Sudder Moonsiffs; and the days so fixed shall not be changed until the same be changed by the said Board by advertisements and notifications in the manner above described; such advertisements and notifications to be issued, on every occasion after the first above provided for, before the close of the official year preceding that in which the new date or dates are to take effect.

Exception in unsettled Provinces and Benares.

IV. And it is hereby enacted, that in Districts not permanently settled, and in the Province of Benares, no sale shall take place for arrears of Land Revenue or other demand of Government without the special sanction of the Sudder Board of Revenue previously obtained in each several case of sale.

Definition of an Arrear.

V. And it is hereby enacted, that if the whole or a portion of a kist or instalment of any month of the Bengallee, Fussullee or Ummullee year be unpaid on the first of the following month, the sum so remaining unpaid shall be considered an arrear of Revenue: that is to say, the kist of Bysakh shall be an arrear on the 1st Jeth; and the kist of Jeth on the 1st Asarh, and so on.

All Estates in arrear to be sold.

VI. And it is hereby enacted, that except as hereinafter excepted, all Estates from which at noon of the day preceding that fixed for a sale an arrear of Revenue may be due, shall on the said fixed day, or on the day or days following as hereinafter provided, be put up to public auction by and in the presence of the Collector or Officer exercising the powers of Collector in that

behalf, and shall be sold to the highest bidder; and no payment or tender of payment made subsequent to the hour of noon of the day preceding that fixed for a sale shall bar or interfere with the sale either at or after the conclusion of that transaction.

Claims to abatement and set off.

VII. And it is hereby enacted, that no claim to abatement or remission of Revenue unless the same shall have been allowed by the authority of Government, nor any private demand or cause of action whatever held or supposed to be held by any defaulter against Government shall bar a sale, nor render a sale under this Act voidable; nor shall the plea that money belonging to the defaulter, and sufficient to pay the balance or part of it, was in the Collector's hands, bar a sale nor render a sale under this Act voidable, unless the money have been transferred in account to credit of the Estate, or unless after due application made to him, the Collector shall have, on insufficient grounds, refused so to transfer it.

Exceptions.

VIII. Provided always, and it is hereby enacted, that no estate shall be sold for the recovery of arrears or demands of the description mentioned below, otherwise than after a notification in the language of the District, specifying the nature and amount of the arrear or demand, shall have been affixed, for a period not less than twenty days preceding the day of sale, in the Office of the Collector, Deputy Collector, or other Officer as aforesaid, by whom the sale is intended to be made, in the Court of the Judge within whose jurisdiction the land advertised lies, in the Courts of all the Principal Sudder Ameens, Sudder Ameens and Sudder Moonsiffs of the District, and at the Police Thannah of the Division in which the estate to which the notice relates, or part of it is situated, the same to be certified by the receipt of the Officer at whose Office such publication may have been made; and also at the Cutcherry of the Malgoozar of the estate, or at some conspicuous place upon the estate, the same to be certified by the peon or other person employed for the purpose. And it shall be declared in the said notification that no payment or tender of payment of the arrear or demand due, which may be made after the hour of noon of the day preceding the fixed day of sale, will bar or interfere with the sale either at or after the transaction.

First—Arrears due from or to be recovered by the sale of estates not permanently settled.

Secondly.—Arrears other than those of the current or the preceding year.

Thirdly.—Arrears of Revenue due on account of estates other than that to be sold.

Fourthly.—Arrears to be recovered by re-sales consequent upon default of purchasers as provided in Section XV. of this Act.

Fifthly—Arrears due on account of Tuccavy, Poolbundee, or other demands not being Land Revenue, but recoverable by the same process as arrears of Land Revenue.

Payments by non-proprietors.

IX. And it is hereby enacted, that Collectors shall, at any time before the hour of noon of the day preceding the fixed day of sale receive as a deposit from any party not being a proprietor of the estate in arrear, the amount of the arrear of Revenue due from it, to be carried to the credit of the said estate at noon as aforesaid, unless before that time the arrear shall have been liquidated by a proprietor of the estate. And in case the party so depositing, whose money shall have been credited to the estate in the manner aforesaid, shall be a plaintiff in a suit pending before a Court of Justice for the possession of the same or any part thereof, it shall be competent to the Judge of the Zillah in which such estate is situated, to order the said party to be put into temporary possession of the said estate, subject to the rules in force for taking security in the cases of appellants and defendants. And if the party depositing whose money shall have been credited as aforesaid shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said party, which would have been endangered, or damaged by the sale of the estate, he shall be entitled to recover the amount of the deposit with interest, from the proprietors of the said estate.

Ward's Estates and Minor's.

X. And it is hereby enacted, that no estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards, and no estate, the sole property of a minor or minors, and descended to him or them by the regular course of inheritance duly notified to the Collector for the informa-

tion of the Court of Wards, but of which the Court of Wards has not assumed the management under Regulation VI. 1822, shall be sold for arrears of Revenue accruing subsequently to his or their succession to the same, until the minor or minors, or one of them, shall have attained the full age of 18 years. And no estate held under attachment by the Revenue Authorities, otherwise than by order of a Judicial Authority, shall be liable to sale for arrears accruing whilst it was so held under attachment. And no estate held under attachment by a Revenue Officer, in pursuance of an order of a Judicial Authority, shall be liable to sale for the recovery of arrears of Revenue accruing during the period of such attachment, until after the end of the year in which such arrears accrued.

Attached by a Revenue Officer.

Attached by a Court.

XI. And it is hereby enacted, that it shall be competent to the Collector at any time before the sale shall have taken place to exempt any estate from sale; and in like manner it shall be competent to the Commissioner of Revenue at any time before the sale shall have taken place, to exempt any estate from sale, and to direct the receipt of arrears due upon it by a special order to the Collector to that effect in each case; and no sale of an estate shall be legal if held after the receipt of an order of exemption in respect to such estate. Provided, however, and it is hereby enacted, that an order for exemption so issued, shall not affect the legality of a sale which may have taken place before the receipt by the Collector of the order for exempting it from sale.

Exemption from sale.

Proviso.

XII. And it is hereby enacted, that in case the Collector, Deputy Collector, or other Officer as aforesaid, shall be unable from sickness, from the occurrence of a holiday, or from any other cause to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it, he be unable, from the like cause, to proceed with it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by a written proclamation stuck up in his Cutcherry; and so on, from day to day, until he shall be able to commence upon, or to proceed with, the sale, but with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

Adjournment.

XIII. And it is hereby enacted, that on the day of sale fixed according to Section III. of this Act, sales shall proceed in regular order; the estate to be sold bearing the lowest number on the Towjee or rent roll of the District being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other Officer as aforesaid to put up any estate out of its regular order by number.

Order of sale.

XIV. And it is hereby enacted, that the party who shall be declared the purchaser of an estate at any such public sale as aforesaid, shall be required to deposit immediately, either in Cash, Bank of Bengal Notes or Post Bills, or Government Securities duly indorsed, 25 per cent, on the amount of his bid, and in default of such deposit, the estate shall, forthwith, be put up again and sold.

Deposit on purchase.

XV. And it is hereby enacted, that the full amount of purchase money shall be made good by the purchaser before noon of the thirtieth day from that on which the sale of the estate bought by him took place, reckoning that day as one of the thirty: or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth: and in default of payment within the prescribed period as aforesaid, then and afterwards as often as such default shall occur, the deposit shall be forfeited and credited to the estate in payment of so much of the balance due from it at the time of sale; and if thereafter any part of the balance for which the sale was made remain due, the estate shall be resold, and the defaulting purchaser shall forfeit all claim to the estate, or to any part of the sum for which it may subsequently be sold, and in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of public Revenue, and it shall be

Balance of purchase money.

so levied and credited to the defaulting proprietor of the estate sold.

Rents stopped after notice for sale.

XVI. And it is hereby enacted, that whenever an estate shall have been sold as aforesaid, the Collector, Deputy Collector, or other Officer as aforesaid, shall affix a proclamation in the language of the District in his Cutcherry; and as soon thereafter as may be in the Cutcherries of the Moonsiffs and of the Darogahs of Police, within whose jurisdiction or jurisdictions any part of such estate may be situated; and also at the Cutcherry of the Malgoozar of such estate; or on some conspicuous place on such estate, forbidding the ryots and under-tenants of such estate to pay rent falling due subsequent to the date therein specified and up to the date of the subsequent notice hereinafter prescribed by Section XX. of this Act, on pain of not being entitled to credit in their accounts with the purchaser for any sums paid within the period aforesaid.

Appeal.

XVII. And it is hereby enacted, that it shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this Act if preferred to him on or before the fifteenth day from the date of sale, reckoning as in Section XV, or if preferred to the Collector for transmission to the Commissioner on or before the tenth day from the day of sale, and not otherwise: and the Commissioner shall be competent in every case of appeal so preferred, to annul any sale of an estate made under this Act, which shall appear to him not to have been conducted according to the provisions of this Act; and the order of the Commissioner annulling a sale or dismissing an appeal shall be final unless set aside by a competent Court of Justice in a regular suit brought for that purpose.

Government may restore Estate.

XVIII. And it is hereby enacted, that it shall be competent to the Commissioner of Revenue on the ground of hardship or injustice to suspend the passing of final orders in any case of appeal from a sale and to represent the case to the Suder Board of Revenue, who, if they see cause, may recommend to the Local Government to annul the sale, and the Local Government in such case, but in no other, may annul the sale and cause the estate to be restored to the proprietor on such conditions as may appear equitable and proper.

Sale when to be final.

XIX. And it is hereby enacted, that all sales of which the purchase money has been paid up as prescribed in Section XV. of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the thirtieth day from the day of sale, reckoning the said day of sale, as the first of the said thirty days. And sales against which an appeal may have been preferred, and the appeal dismissed by the Commissioner, shall be final and conclusive from the date of such dismissal, if more than thirty days from the day of sale, or if less, then at noon of the thirtieth day as above provided.

Certificate of Title.

XX. And it is hereby enacted, that immediately upon a sale becoming final and conclusive, the Collector or other Officer as aforesaid, shall give to the purchaser a Certificate of title in the following form:

I certify that A. B. has purchased at Public Auction under Act —— of ——— Mehal C, and that his purchase has taken effect on and since the —— day of ——— (being the date of sale)

(Signed) D. E., *Collector.*

And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate sold being vested in the person or persons named from the date specified: and the Collector shall also notify such transfer by written proclamation in his own Cutcherry, and in those of the Moonsiff and Darogah of the jurisdictions within which any part of the estate sold shall be situated, and shall apply the purchase money first to the liquidation of all arrears due upon the day of sale, or upon the day of the original sale, if the sale finally consummated be a re sale, and secondly, to the liquidation of all outstanding demands debited to the Muhal in the Public accounts of the district, holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate sold, to be paid to their receipt on demand in the manner following; to wit, in shares proportioned to their recorded interest in the estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt.

Benamee purchase.

XXI. And it is hereby enacted, that any suit brought to oust the certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person, not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

Notice of annulment.

XXII And it is hereby enacted, that the annulment of a sale by a Commissioner shall be publicly notified by the Collector or other Officer as aforesaid in the same manner as the becoming final and conclusive of sales is required to be notified by Section XX. of this Act, and the amount of deposit and balance of purchase money shall be forthwith returned to the purchaser, with interest thereon, at the rate of the current public securities, from the dates on which they were respectively paid in, to the date on which the refund is actually made.

Purchase liable for Mesne Revenue.

XXIII. And it is hereby enacted, that the party certified as the proprietor of an estate by purchase at public sale for the recovery of arrears of Revenue shall be answerable for all instalments of the Revenue of Government which may fall due subsequently to the day of sale: provided, however, that in the case of re-sales the purchaser shall be answerable for all instalments of Revenue which fell due subsequently to the date fixed for the first sale.

Grounds and conditions of reversal by a Civil Court.

XXIV. And it is hereby enacted, that no sale for arrears of Revenue or other demands realizable in the same manner, made after the promulgation of this Act, shall be set aside by a Court of Justice except upon the ground of its having been made contrary to the provisions of this Act: And except the contravention thereto shall have been declared and specified in an appeal made to the Commissioner, under Section XVII of this Act: And no person shall be entitled to contest the legality of a sale after having received any portion of the purchase money: Provided, however, and it is hereby enacted, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or circumstance connected with a sale under this Act, from his remedy in a personal action for damages against the individual by whose act or omission he considers himself to have been wronged.

Proviso.

Refund on Reversal of Sale.

XXV. And it is hereby enacted, that in the event of a sale being reversed by a final decree of a Court of Justice, the purchase money shall be refunded to the purchaser by Government, together with interest at the rate of the current public securities.

Enhancement of rents in Bengal, &c.

XXVI. And it is hereby enacted, that the purchaser of an estate sold under this Act, for the recovery of arrears due on account of the same, in the permanently settled districts of Bengal, Behar, Orissa and Benares, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled after notice given under Section X. Regulation V. 1812, to enhance at discretion, (any thing in the existing Regulations to the contrary notwithstanding) the rents of all under-tenures in the said estate, and to eject all tenants thereof, with the following exceptions:

First. Tenures which were held as Istemrarce or Mocurreree at a fixed rent, more than 12 years before the permanent Settlement.

Secondly. Tenures existing at the time of the Decennial Settlement, which have not been, or may not be, proved to be liable to encrease of assessment, on the grounds stated in Section 3 Regulation VIII. of 1793.

Thirdly. Lands held by Khood Kasht or Kudeemee Ryots having rights of occupancy under the Regulations in force

Fourthly. Lands held under bonâ fide leases, at fair rents, temporary or perpetual, for the erection of dwelling houses, or manufactories, and being so used, or for gardens, tanks, canals, clearing of jungle, or like purposes.

Fifthly Farms granted in good faith at fair rents by a former proprietor, for terms not exceeding twenty years, under written and duly registered leases.

Under-tenures elsewhere.

XXVII. And it is hereby enacted, that the purchaser of an estate sold under this Act for the recovery of arrears due on account of the same in Districts other than those mentioned in Section XXVI. shall acquire the estate free from all encumbrances

which may have been imposed upon it after the time of settlement, and shall be competent to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots or the like settled or credited by the first engager or his representatives, subsequently to the last Settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except bonâ fide leases of ground for the erection of dwelling houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water courses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing in this Act contained shall be construed to entitle any purchaser of land at a public sale to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid than was demandable by the former Malgoozar, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former Malgoozars from the old established rates by special favour, or for a consideration, or the like, or in cases in which it may be proved that according to the custom of the Pergunnah, Mouzah, or other local division such persons are liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government.

Purchase by a defaulter, &c.

XXVIII. And it is hereby enacted, that excepting copartners of estates under Butwarrah who may have saved their shares from sale under Sections 33 and 34, Regulation XIX. 1814, any recorded or unrecorded proprietor or copartner who may purchase in his own name or in the name of another the estate of which he is proprietor or copartner; or who by re-purchase or otherwise, may recover possession of the said estate after it has been sold for arrears under this Act, and likewise any purchaser of an estate sold for other arrears or demands than those accruing upon itself, shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale and shall not acquire any rights in respect to Ryots and under-tenants which were not possessed by the previous proprietor at the time of the sale of the said estate

Arrears of rent.

XXIX. And it is hereby enacted, that arrears of rent which at the date of sale may be due to the defaulter from his tenants, shall be recoverable by him after a sale by any process which might have been used by him for that purpose before the sale was made

Contempt.

XXX. And it is hereby enacted, that any Collector or Officer exercising the powers of Collector, shall be competent to punish any contempt committed in his presence in open Cutcherry or Office for the time being, by fine, to an extent not exceeding Co.'s Rs 200, commutable, if not paid to imprisonment in the civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector as aforesaid, shall carry his sentence into effect. Provided that an appeal from any order passed under this Section shall lie to the Revenue Commissioner, whose decision shall be final.

Default.

XXXI. And it is hereby enacted, that a default to make good a bid by making the deposit required by Section XIV. of this Act shall be held to be a contempt.

Operation of Act.

XXXII And it is hereby enacted, that the operation of this Act shall be confined to the Provinces of Bengal, Behar, Orissa and Benares, and to the Ceded and Conquered Provinces under the Government of the Presidencies of Fort William in Bengal, and nothing in this Act contained shall affect land in the Town of Calcutta or the Settlements of Singapore, Penang or Malacca.

Date of Effect.

XXXIII. And it is hereby enacted, that this Act shall have effect on and after the first day of the next ensuing Fussily and Ummullee year respectively in those provinces in which the Fussily and Ummullee eras are severally current; and on and after the first day of the Bengalee year 1249 in the districts in which the Bengalee era is current.

Ordered, that the said Draft be re-considered at the first Meeting of the Legislative Council of India after the 18th day of April next.

T. H. MADDOCK,

Secy. to the Govt. of India.